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CHAPTER 664

An act to add Chapter 4 (commencing with Section 71080) to Part 2 of Division 34 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Chapter 4 (commencing with Section 71080) is added to Part 2 of Division 34 of the Public Resources Code, to read:

CHAPTER 4. ENVIRONMENTAL PROTECTION INDICATORS FOR CALIFORNIA

71080. The Legislature finds and declares the following:

(a) Traditionally, many of California's environmental programs have assessed their performance using measures of activity, including, for example, the number of permits granted or regulatory standards adopted. Addressing the complex environmental challenges of the 21st century will require new approaches that rely on better information from objective and scientifically based environmental indicators. Over the years, substantial efforts have been devoted toward this end, yet historically there have been very few meaningful, objective measures with which to determine the environmental impacts of these efforts.

(b) The California Environmental Protection Agency has made a commitment to move away from measures of activity, and instead focus on measurable environmental results to judge program performance. To support this commitment, the California Environmental Protection Agency established the Environmental Protection Indicators for California (EPIC) Project in 2000, and charged EPIC with developing and maintaining a comprehensive set of environmental indicators, which are scientific measurements of environmental conditions and trends. To ensure that the development of indicators was based on sound science, the California Environmental Protection Agency designated its Office of Environmental Health Hazard Assessment to lead the effort. The California Environmental Protection Agency, working in partnership with the Resources Agency and in cooperation with the Department of Health Services, released a report containing the initial set of 84 environmental indicators in April 2002.

(c) Objective and scientifically based environmental indicators improve our understanding of the environment and how human activities and other factors can influence it. The indicators establish a

scientific basis for evaluating the effectiveness of environmental programs and identifying the need for specific actions to improve environmental conditions throughout the state and the disproportionate impact on low-income communities and communities of color. Decisions to create, modify, or eliminate California Environmental Protection Agency policies and programs need to be driven by information reflected by environmental indicators; and, to the extent feasible, budget decisions should include a reference as to how the proposed change is intended to impact a relevant environmental indicator.

(d) To ensure the credibility of objective and scientifically based environmental indicators, a qualified scientific body with expertise in environmental and public health protection should provide input into the selection and development of the indicators.

(e) To ensure the relevance of the environmental indicators, input should be sought from a broad range of stakeholders.

(f) It is the intent of the Legislature that the Secretary for Environmental Protection, the Secretary of the Resources Agency, and the Director of the Department of Health Services in conjunction with the boards, departments, and offices in their respective agencies, use environmental indicators, where applicable, in the development of the budget proposals for the 2005–06 fiscal year and each fiscal year thereafter.

71081. (a) Beginning on July 1, 2004, to the extent that funds are appropriated by the Legislature for this purpose, the office, on behalf of the office of the secretary, shall develop and maintain a system of environmental indicators. The office shall develop and maintain the system to meet all of the following objectives for using environmental indicators:

(1) Provide policymakers and the public with an improved understanding of the condition of the state's environment and the effects of the release of contaminants on public health and the environment.

(2) Provide policymakers and the public with information to evaluate the effectiveness of the agency's programs in improving environmental quality and protecting public health throughout the state, including environmental quality and public health in low-income communities and communities of color.

(3) Assist in the development and modification of agency programs, plans, and policies as environmental conditions change over time.

(4) Assist the agency in making budget decisions that address the most significant environmental concerns.

(b) The following definitions apply to this section:

(1) ''Agency'' means the California Environmental Protection Agency.

(2) ''Environmental indicator'' means an objective and scientifically based measure that represents information on environmental conditions, releases of contaminants into the environment, or the effects of those releases.

(3) ''Office'' means the Office of Environmental Health Hazard Assessment.

(4) ''Secretary'' means the Secretary for Environmental Protection.

(c) The secretary shall submit a report on the environmental indicators developed pursuant to this chapter to the Governor and the Legislature on or before January 1, 2006, and by January 1 every two years thereafter. The report shall include a discussion as to the manner in which the environmental indicators are being used by the agency to meet the objectives set forth in subdivision (a). The office shall make the report available to the public on its Web site. The office shall include on its Web site any additional relevant information in support of those environmental indicators and shall update that information posted on the Web site as new information becomes available.

(d) The office shall be the lead agency for developing new environmental indicators, for modifying, deleting, and updating existing environmental indicators, and for developing and maintaining an environmental indicator database. The office shall lead an intra-agency workgroup, consisting of representatives from each of the boards, departments, and offices within the agency. The office shall consult with the intra-agency workgroup in developing and maintaining the environmental indicators, program planning, policy formulation, and other decisionmaking processes, and in drafting the report required under subdivision (c).

(e) In developing and maintaining the environmental indicators, the office shall consult with the Resources Agency, the State Department of Health Services, and other state agencies as appropriate.

(f) The office may utilize information for indicators that is not collected by other boards and departments within the agency and may identify and establish new indicators.

(h) In implementing this section, the office may hold public meetings to receive comments from a broad range of stakeholders, including, but not limited to, local government, the regulated community, nongovernmental organizations, and other groups with an interest in environmental issues.

(i) The office shall consult with the scientific review panel established pursuant to Section 50.8 of the Labor Code for the purpose of establishing, updating, and evaluating environmental indicators.

(j) The secretary shall periodically assess the ability of the environmental indicators system to meet each of the objectives cited in subdivision (a) and the ability of the system to support the development

and implementation of the agencywide environmental justice strategy pursuant to Section 71113.

71082. (a) As appropriate, a budget change proposal submitted to the Legislature by a board, department, or office within the California Environmental Protection Agency or the Resources Agency shall describe how the proposal would affect any applicable ''Type I'' environmental indicator. To the extent that a budget change proposal relates to a ''Type II'' or ''Type III'' environmental indicator, the budget change proposal shall reference what data collection and further analysis is needed before the environmental status or trend that is the subject of the indicator may be presented.

(b) A board, department, or office within the California Environmental Protection Agency shall explain how its bond programs relate to or affect environmental indicators.

CHAPTER 665

An act to amend Sections 33541, 51226.4, and 60041 of the Education Code, to amend Sections 40507, 42622, 42645, and 42647 of, and to add Part 4 (commencing with Section 71300) to Division 34 of, to repeal Section 42603 of, the Public Resources Code, relating to environmental education.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 33541 of the Education Code is amended to read:

33541. (a) The State Board of Education and the department shall revise, as necessary, the framework in science to include the necessary elements to teach environmental education, including, but not limited to, all of the following topics:

(1) Integrated waste management.
(2) Energy conservation.
(3) Water conservation and pollution prevention.
(4) Air resources.
(5) Integrated pest management.
(6) Toxic materials.
(7) Wildlife conservation and forestry.

(b) The Office of Education and the Environment of the California Integrated Waste Management Board, established pursuant to Part 4

(commencing with Section 71300) of Division 34 of the Public Resources Code, shall provide the State Board of Education and the department with available environmental information and materials to aid in implementing subdivision (a).

(c) Any recommended revisions in reference to the course requirements in science shall not be implemented until the commencement of the appropriate curriculum framework adoption cycle subsequent to the revision.

SEC. 2. Section 51226.4 of the Education Code is amended to read:

51226.4. (a) For purposes of this section, the following definitions shall apply:

(1) ''Office'' means the Office of Education and the Environment of the California Integrated Waste Management Board, established pursuant to Part 4 (commencing with Section 71300) of Division 34 of the Public Resources Code.

(2) ''Pilot program'' means the Environmental Ambassador Pilot Program established pursuant to this section.

(b) The office shall establish the Environmental Ambassador Pilot Program, which shall conclude June 30, 2005.

(c) The office shall establish the pilot program to facilitate the utilization of environmental education as a means to environmental action. The office shall include, in the pilot program, but is not limited to, the development, support, and promotion of all of the following:

(1) Development of sustainable elementary and secondary school programs for environmental systems and environmental science and technology, including school gardens using composted materials.

(2) Coordinated instructional resources and strategies with onsite conservation efforts with active pupil participation, including energy audits and conservation.

(3) Service-learning partnerships, in which schools and communities work to provide real world experiences to pupils in areas of the environment and resource conservation, including education projects developed and implemented by pupils to encourage others to utilize integrated waste management concepts.

(4) Assessment of the impact to participating pupils and schools of the pilot program, to the extent feasible, on pupil achievement and resource conservation.

(d) The office shall use findings and results of the pilot program to develop and further refine the unified education strategy established by the office pursuant to Part 4 (commencing with Section 71300) of Division 34 of the Public Resources Code.

(e) On or before June 30, 2005, the office shall prepare and submit a report to the Governor and the Legislature on the results of the pilot project.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2.5. Section 60041 of the Education Code is amended to read:

60041. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray, whenever appropriate:

(a) The education principles for the environment as set forth in subdivision (b) of Section 71300 of the Public Resources Code.

(b) Humanity's place in ecological systems and the necessity for the protection of our environment.

(c) The effects on the human system of the use of tobacco, alcohol, narcotics and restricted dangerous drugs as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

SEC. 3. Section 40507 of the Public Resources Code is amended to read:

40507. (a) On or before March 1 of each year, the board shall file an annual report with the Legislature highlighting significant programs or actions undertaken by the board to implement programs pursuant to this division during the prior calendar year. The report shall include, but is not limited to, the information described in subdivision (b).

(b) Commencing January 1, 1997, the board shall file annual progress reports with the Legislature covering the activities and actions undertaken by the board in the prior fiscal year. The board shall prepare, and may electronically file with the Legislature, the progress reports throughout the calendar year, as determined by the board, on the following programs:

(1) The local enforcement agency program.

(2) The research and development program.

(3) The public education program.

(4) The market development program.

(5) The used oil program.

(6) The planning and local assistance program.

(7) The site cleanup program.

(c) The progress report shall specifically include, but is not limited to, all of the following information:

(1) Pursuant to paragraph (1) of subdivision (b), the status of the certification and evaluation of local enforcement agencies pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

(2) Pursuant to paragraph (2) of subdivision (b), all of the following information:

(A) The results of the research and development programs established pursuant to Chapter 13 (commencing with Section 42650) of Part 3.

(B) A report on information and activities associated with the establishment of the Plastics Recycling Information Clearinghouse, pursuant to Section 42520.

(C) A report on the progress in implementing the monitoring and control program for the subsurface migration of landfill gas established pursuant to Section 43030, including recommendations, as needed, to improve the program.

(D) A report on the comparative costs and benefits of the recycling or conversion processes for waste tires funded pursuant to Chapter 17 (commencing with Section 42860) of Part 3.

(3) Pursuant to paragraph (3) of subdivision (b), all of the following information:

(A) A review of actions taken by the board to educate and inform individuals and public and private sector entities who generate solid waste on the importance of source reduction, recycling, and composting of solid waste, and recommendations for administrative or legislative actions which will inform and educate these parties.

(B) A report on the effectiveness of the public information program required to be implemented pursuant to Chapter 12 (commencing with Section 42600) of Part 3, including recommendations on administrative and legislative changes to improve the program.

(C) A report on the status and effectiveness of school district source reduction and recycling programs implemented pursuant to Chapter 12.5 (commencing with Section 42620) of Part 3, including recommendations on administrative and legislative changes to improve the program's effectiveness.

(D) A report on the effectiveness of the integrated waste management educational program and teacher training plan implemented pursuant to Part 4 (commencing with Section 71300) of Division 34, including recommendations on administrative and legislative changes which will improve the program.

(E) A summary of available and wanted materials, a profile of the participants, and the amount of waste diverted from disposal sites as a result of the California Materials Exchange Program established pursuant to subdivision (a) of Section 42600.

(4) Pursuant to paragraph (4) of subdivision (b), all of the following information:

(A) A review of market development strategies undertaken by the board pursuant to this division to ensure that markets exist for materials diverted from solid waste facilities, including recommendations for administrative and legislative actions which will promote expansion of those markets. The recommendations shall include, but not be limited to, all of the following:

(i) Recommendations for actions to develop more direct liaisons with private manufacturing industries in the state to promote increased utilization of recycled feedstock in manufacturing processes.

(ii) Recommendations for actions which can be taken to assist local governments in the inclusion of recycling activities in county overall economic development plans.

(iii) Recommendations for actions to utilize available financial resources for expansion of recycling industry capacity.

(iv) Recommendations to improve state, local, and private industry product and material procurement practices.

(B) Development and implementation of a program to assist local agencies in the identification of markets for materials that are diverted from disposal facilities through source reduction, recycling, and composting pursuant to Section 40913.

(C) A report on the Recycling Market Development Zone Loan Program provided for in subdivision (c) of Section 42010), pursuant to subdivision (f) of Section 42010.

(D) A report on implementation of the Compost Market Program pursuant to Chapter 5 (commencing with Section 42230) of Part 3.

(E) A report on the progress in developing and implementing the comprehensive Market Development Plan, pursuant to Article 2 of Chapter 1 (commencing with Section 42005) of Part 3.

(F) The number of retreaded tires purchased by the Department of General Services during the prior fiscal year pursuant to Section 42414.

(G) The results of the study performed in consultation with the Department of General Services pursuant to Section 42416 to determine if tire retreads, procured by the department, have met all quality and performance criteria of a new tire, including any recommendations to expand, revise, or curtail the program.

(H) The number of recycled lead-acid batteries purchased during the prior fiscal year by the Department of General Services pursuant to Section 42443.

(I) A list of established price preferences for recycled paper products for the prior fiscal year pursuant to paragraph (1) of subdivision (c) of the Public Contract Code.

(J) A report on the implementation of the white office paper recovery program pursuant to Chapter 10 (commencing with Section 42560) of Part 3.

(5) Pursuant to paragraph (5) of subdivision (b), both of the following information:

(A) A report on the annual audit of the used oil recycling program established pursuant to Chapter 4 (commencing with Section 48600) of Part 7.

(B) A summary of industrial and lubricating oil sales and recycling rates, the results of programs funded pursuant to Chapter 4 (commencing with Section 48600) of Part 7, recommendations, if any, for statutory changes to the program, including changes in the amounts of the payment required by Section 48650 and the recycling incentive, and plans for present and future programs to be conducted over the next two years.

(6) Pursuant to paragraph (6) of subdivision (b), all of the following information:

(A) The development by the board of the model countywide or regional siting element and model countywide or regional agency integrated waste management plan pursuant to Section 40912, including its effectiveness in assisting local agencies.

(B) The adoption by the board of a program to provide assistance to cities, counties, or regional agencies in the development and implementation of source reduction programs pursuant to subdivision (b) of Section 40912.

(C) The development by the board of model programs and materials to assist rural counties and cities in preparing city and county source reduction and recycling elements pursuant to Section 40914.

(D) A report on the number of tires that are recycled or otherwise diverted from disposal in landfills or stockpiles.

(E) A report on the development and implementation of recommendations, with proposed implementing regulations, for providing technical assistance to counties and cities that meet criteria specified in Section 41782, so that those counties and cities will be able to meet the objectives of this division. The recommendations shall, among other things, address both of the following matters:

(i) Assistance in developing methods of raising revenue at the local level to fund rural integrated waste management programs.

(ii) Assistance in developing alternative methods of source reduction, recycling, and composting of solid waste suitable for rural local governments.

(F) A report on the status and implementation of the ''Buy Recycled'' program established pursuant to subdivision (d) of Section 42600, including the waste collection and recycling programs established pursuant to Sections 12164.5 and 12165 of the Public Contract Code.

(7) Pursuant to paragraph (7) of subdivision (b), a description of sites cleaned up under the Solid Waste Disposal and Codisposal Site Cleanup Program established pursuant to Article 2.5 (commencing with Section 48020) of Chapter 2 of Part 7, a description of remaining sites where there is no responsible party or the responsible party is unable or unwilling to pay for cleanup, and recommendations for any needed legislative changes.

SEC. 4. Section 42603 of the Public Resources Code is repealed.

SEC. 5. Section 42622 of the Public Resources Code is amended to read:

42622. The source reduction and recycling program for school districts developed pursuant to Section 42621 shall, to the extent feasible, be designed to complement and further the educational goals of the supplementary educational materials developed pursuant to Part 4 (commencing with Section 71300) of Division 34, and the integrated waste management issues addressed within the science curriculum framework developed by the State Board of Education.

SEC. 6. Section 42645 of the Public Resources Code is amended to read:

42645. (a) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall establish a program to provide grants to school districts and schools to assist in the development and implementation of educational programs and to promote the use of existing educational programs to teach the concepts of source reduction, recycling, and composting.

(b) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall adopt criteria for awarding grants pursuant to this article, including, but not limited to, the grant's structure, the schedule for awarding grants, and grant amount limits. This criteria shall include, but not be limited to, a procedure for the geographic distribution of the grants and the appropriate representation of elementary, middle, and high school as grant recipients. In adopting this criteria, the board shall include, in the criteria, the extent to which an office, a school district, or a school has demonstrated a commitment to achieving the following goals:

(1) The adoption of waste reduction and recycling programs and practices.

(2) The adoption and implementation of the unified education strategy adopted pursuant to Part 4 (commencing with Section 71300) of Division 34.

(3) The allocation of adequate space for the safe collection, storage, and loading of recyclable materials.

(4) To the maximum extent feasible, the use of recycled materials and environmentally preferable products in the construction or modernization of public school facilities.

(5) Participation in the environmental ambassador pilot program established pursuant to Section 51226.4 of the Education Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the adoption

of criteria for the awarding of grants pursuant to this article is not the adoption of a regulation, and is exempt from the requirements of that chapter.

SEC. 7. Section 42647 of the Public Resources Code is amended to read:

42647. The board may enter into an interagency agreement with the State Department of Education or other state agencies to implement this chapter, Part 4 (commencing with Section 71300) of Division 34, and Sections 33541 and 51226.4 of the Education Code.

SEC. 8. Part 4 (commencing with Section 71300) is added to Division 34 of the Public Resources Code, to read:

PART 4. STATEWIDE ENVIRONMENTAL EDUCATION

71300. (a) For purposes of this part ''office'' means the Office of Education and the Environment of the Integrated Waste Management Board, as established pursuant to this section.

(b) The Office of Education and the Environment is hereby established in the Integrated Waste Management Board. The office shall report to both the Secretary for Environmental Protection and the board. The office shall dedicate its effort to implementing the statewide environmental educational program prescribed pursuant to this part and the integrated waste management educational requirements of this division. The office, through staffing and resources, shall give a high priority to implementing the statewide environmental education program.

(c) The office, under the direction of the Secretary for Environmental Protection and the board, in cooperation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall develop and implement a unified education strategy on the environment for elementary and secondary schools in the state. The office shall develop a unified education strategy to do all of the following:

(1) Coordinate instructional resources and strategies for providing active pupil participation with onsite conservation efforts.

(2) Promote service-learning opportunities between schools and local communities.

(3) Assess the impact to participating pupils of the unified education strategy on pupil achievement and resource conservation.

(4) On or before June 30, 2006, the office shall report to the Legislature and the Governor on its progress in developing, implementing, and assessing the unified education strategy.

(d) The State Department of Education, State Board of Education, and Secretary for Education, in cooperation with the board, shall develop

and implement to the extent feasible, a teacher training and implementation plan, to guide the implementation of the unified education strategy, for the education of pupils, faculty, and administrators on the importance of integrating environmental concepts and programs in schools throughout the state. The strategy shall project the phased implementation of elementary, middle, and high school programs.

(e) In implementing this part, the office may hold public meetings to receive and respond to comments from affected state agencies, stakeholders, and the public regarding the development of resources and materials pursuant to this part.

(f) In implementing this part, the office shall coordinate with other agencies and groups with expertise in education and the environment, including, but not limited to, the California Environmental Education Interagency Network.

(g) Any instructional materials developed pursuant to this part shall be subject to the requirements of Chapter 1 (commencing with Section 60000) of Part 33 of the Education Code, including, but not limited to, reviews for legal and social compliance before the materials may be used in elementary or secondary public schools.

71301. (a) As part of the unified education strategy, the office, under the direction of the Secretary for Environmental Protection and the board, in cooperation with the Resources Agency, the State Department of Education, the State Board of Education, and the Secretary for Education, shall develop education principles for the environment for elementary and secondary school pupils by July 1, 2004. The principles may be updated every four years thereafter. The principles shall be aligned to the academic content standards adopted by the State Board of Education pursuant to Section 60605 of the Education Code. The principles shall be used to do all of the following:

(1) To direct state agencies that include environmental education components for elementary and secondary education in regulatory decisions or enforcement actions.

(2) To align state agency environmental education programs and materials that are developed for elementary and secondary education.

(b) The education principles for the environment shall include, but not be limited to, concepts relating to the following topics:

(1) Environmental sustainability.
(2) Water.
(3) Air.
(4) Energy.
(5) Forestry.
(6) Fish and wildlife resources.
(7) Oceans.

(8) Toxics and hazardous waste.
(9) Integrated waste management.
(10) Integrated pest management.
(11) Public health and the environment.
(12) Pollution prevention.
(13) Resource conservation and recycling.
(14) Environmental justice.

(c) The principles shall be aligned to the applicable academic content standards adopted by the State Board of Education and shall not duplicate or conflict with any academic content standards.

(d) (1) Prior to the adoption of the criteria developed for textbook adoption required pursuant to Section 60200 or 60410 of the Education Code for Science, the Instructional Materials Advisory Panel shall consult with the office to incorporate, where feasible, education principles for the environment.

(2) The education principles for the environment shall be incorporated in criteria developed for textbook adoption required pursuant to Section 60200 or 60410 of the Education Code in Science, Mathematics, English/Language Arts, and History/Social Sciences.

(e) If the content standards required pursuant to Section 60605 of the Education Code are revised, the education principles for the environment shall be appropriately considered for inclusion into part of the revised academic content standards.

71302. (a) Using the education principles for the environment required in Section 71301, the office, under the direction of the Secretary for Environmental Protection and the board, shall develop, in cooperation with the California Environmental Protection Agency, the Resources Agency, the State Department of Education and the State Board of Education, a model environmental curriculum that incorporates these education principles for the environment. The model curriculum shall be aligned with applicable State Board of Education adopted academic content standards in Science, Mathematics, English/Language Arts, and History/Social Sciences, to the extent that any of those content areas are addressed in the model curriculum.

(b) The model curriculum shall be submitted to the Curriculum Development and Supplementary Materials Commission for review. The commission shall submit its recommendation to the Secretary for Environmental Protection and to the Secretary of the Resources Agency by July 1, 2005.

(1) The Secretary for Environmental Protection and the Secretary of the Resources Agency shall review and comment on the model curriculum by January 1, 2006.

(2) The model curriculum along with the comments by the Secretary for Environmental Protection and the Secretary of the Resources Agency shall be submitted to the State Board of Education for its approval.

71303. (a) The State Department of Education shall incorporate into publications that provide examples of curriculum resources for teacher use, those materials developed by the office that provide information on the education principles for the environment required in Section 71300.

(b) The model environmental curriculum approved by the State Board of Education, pursuant to Section 71302 shall be made available by the office to elementary and secondary schools to the extent that funds are available for this purpose. The State Department of Education shall make the model curriculum available electronically including posting on its Web site.

(c) The State Department of Education, to the extent feasible and to the extent that funds are available for this purpose, shall encourage the development and use of instructional materials and active pupil participation in campus and community environmental education programs. To the extent feasible, the environmental education programs should be considered in the development and promotion of after school programs for elementary and secondary school pupils and state and local professional development activities to provide teachers with content background and resources to assist in teaching about the environment.

(d) (1) The board shall assume costs associated with the printing of the approved model curriculum as set forth in subdivision (b). The board shall use, for these purposes, funds that are available for its administrative costs.

(2) From funds available for its administrative costs, the State Department of Education shall post and maintain the model curriculum on its Internet site and pay any costs associated with any related online questionnaire on its Internet site as set forth in subdivision (b).

(3) The State Department of Education shall explore implementation of this section from its baseline resources dedicated to this purpose and if funding is not available from that source, then funding may be provided to the department, pursuant to appropriation by the Legislature, under Section 71305.

71304. (a) The office, under the direction of the Secretary for Environmental Protection, shall be responsible for the statewide coordination of regulatory administrative decisions that require the development or encourage the promotion of environmental education for elementary and secondary school pupils.

(b) All California Environmental Protection Agency or Resources Agency boards, departments, or offices that take regulatory actions or take enforcement actions requiring the development of or encouraging

the promotion of environmental education for elementary and secondary school pupils shall, prior to adoption or approval of the action, seek comments on the action from the office in order to promote consistency with this part and cross-media coordination.

(c) The office shall coordinate with all state agencies to develop and distribute environmental education materials.

(d) After the educational principles for the environment are incorporated into the content standards, materials produced and distributed in the public schools shall be aligned to those content standards, as applicable, revised pursuant to Chapter 1 (commencing with Section 60000) of Part 33, of the Education Code, and adopted by the State Board of Education.

71305. (a) The Environmental Education Account is hereby established within the State Treasury. Moneys in the account may, upon appropriation by the Legislature, be expended by the California Environmental Protection Agency, in consultation with the board, for the purposes of this part. The board shall provide recommendations to the Secretary for Environmental Protection regarding expenditures from the account. The Secretary for Environmental Protection shall administer this part, including, but not limited to, the account.

(b) Notwithstanding any other provision of law to the contrary, the agency may accept and receive federal, state, and local funds and contributions of funds from a public or private organization or individual. The account may also receive 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 for the purposes if this part. The account may receive those funds, contributions, or proceeds from judgments, that are specifically designated for use for environmental education purposes. 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) into the account.

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 666

An act to amend Section 25401.6 of, and to add Chapter 8.6 (commencing with Section 25740) to Division 15 of, the Public Resources Code, and to amend Sections 383.6, 394.25, and 399.8 of, and to repeal Sections 383.5, 383.7, 399.6, 399.8, and 445 of, the Public Utilities Code, relating to energy.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 25401.6 of the Public Resources Code is amended to read:

25401.6. (a) In its administration of Section 25744, the commission shall establish a separate rebate for eligible distributed emerging technologies for affordable housing projects including, but not limited to, projects undertaken pursuant to Section 50052.5, 50053, or 50199.4 of the Health and Safety Code. In establishing the rebate, where the commission determines that the occupants of the housing shall have individual meters, the commission may adjust the amount of the rebate based on the capacity of the system, provided that a system may receive a rebate only up to 75 percent of the total installed costs. The commission may establish a reasonable limit on the total amount of funds dedicated for purposes of this section.

(b) It is the intent of the Legislature that this section fulfills the purpose of paragraph (5) of subdivision (b) of Section 25744.

SEC. 2. Chapter 8.6 (commencing with Section 25740) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.6. RENEWABLE ENERGY RESOURCES PROGRAM

25740. It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

25741. As used in this chapter, the following terms have the following meaning:

(a) ''In-state renewable electricity generation facility'' means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste

conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(3) For the purposes of this subdivision, ''solid waste conversion'' means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(A) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801.1 of the Health and Safety Code.

(C) The technology produces no discharges to surface or groundwaters of the state.

(D) The technology produces no hazardous wastes.

(E) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(F) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(G) The technology meets any other conditions established by the commission.

(H) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph ''local agency'' means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(b) ''Renewable energy public goods charge'' means that portion of the nonbypassable system benefits charge authorized to be collected and to be transferred to the Renewable Resource Trust Fund pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(c) ''Report'' means the report entitled ''Investing in Renewable Electricity Generation in California'' (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that

are designed to improve the competitiveness of existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6 of the Public Utilities Code.

(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(1) Of the funding for existing renewable electricity generation facilities available pursuant to this section, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(2) The commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The commission shall also consider inflation when adjusting the structure.

(3) The commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the price paid for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and price paid for electricity or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The price paid for electricity shall be determined by the commission based on the energy prices paid to nonutility power generators as authorized by the Public Utilities Commission, or on otherwise available measures of price. For the first tier technologies, the commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.

(4) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(A) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the commission.

(B) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving

fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this section.

(C) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge, shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of renewable resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the commission, that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the funding requirements of the renewable energy public goods charge.

(B) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(C) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain

operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(E) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(2) The commission may determine as part of a solicitation, that a facility that does not meet the definition of an ''in-state renewable electricity generation technology'' facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets all of the following requirements:

(A) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(B) It is developed with guaranteed contracts to sell its generation to end-use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(D) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(E) It meets any other condition established by the commission.

(3) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(A) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6 of the Public Utilities Code.

(B) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(C) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(D) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(E) Is a solid waste conversion facility, unless the facility meets the criteria established in paragraph (3) of subdivision (a) of Section 25741

and the facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000), has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

(4) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of the renewable energy public goods charge.

(5) The commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(6) In awarding funding, the commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(c) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(d) Facilities engaging in the direct combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(e) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:

(1) Agricultural crops and agricultural wastes and residues.

(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or

right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(3) Wood and wood wastes that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Sec. 4511) of Part 2 of Division 4).

(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

25744. (a) Seventeen and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems

are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insulation levels, and installation orientation.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

25745. (a) Ten percent of the money collected pursuant to the renewable energy public goods charge shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(b) Any funds used for customer credits pursuant to this section shall be expended, as provided in the report, subject to all of the following requirements:

(1) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject

to the renewable energy public goods charge that is contributing funds to support programs under this chapter, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

(2) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's bills. Credits may not exceed one and one-half cents ($0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars ($1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(3) The commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(4) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.

(5) The Public Utilities Commission shall notify the commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25 of the Public Utilities Code.

25746. One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with the report to promote renewable energy and disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter shall be exempt from the requirements of

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

(b) Funds to further the purposes of this chapter may be committed for multiple years.

(c) Awards made pursuant to this chapter are grants, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the commission, shall not constitute the rendering of goods, services, or a direct benefit to the commission.

25748. The commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this chapter. Reports prepared pursuant to this section shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The report shall identify the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25743 and their impacts on improving air quality. The reports shall discuss the progress being made toward achieving the 17-percent target provided in Section 25740 by each funding category authorized pursuant to this chapter. The reports shall also address the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751. Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations may not reduce the allocation established in Section 25743 nor increase the allocation established in Section 25742.

25749. The commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The commission shall consult with the Public Utilities Commission,

electrical corporations, and the Independent System Operator, in the development and preparation of the plan.

25750. The commission shall participate in proceedings at the Public Utilities Commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Customer-Credit Renewable Resource Purchases Account.

(5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 399.6 of the Public Utilities Code. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be

accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The commission shall examine the cashflow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments.

(g) The commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports shall be submitted to the Legislature not more than 30 days after the close of each quarter and shall include information describing the awards submitted to the Controller for payment pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 3. Section 383.5 of the Public Utilities Code is repealed.

SEC. 4. Section 383.6 of the Public Utilities Code is amended to read:

383.6. The commission shall, by December 1, 2003, prepare and submit to the Legislature, a comprehensive transmission plan for renewable electricity generation facilities, to provide for the rational, orderly, cost-effective expansion of transmission facilities that may be necessary to facilitate the development of renewable electricity generation facilities identified in the renewable electricity generation resource plan prepared pursuant to Section 25749 of the Public Resources Code. The commission shall consult with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and electrical corporations in the development of and preparation of the plan.

SEC. 5. Section 383.7 of the Public Utilities Code is repealed.

SEC. 6. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall

be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to subdivision (a) of Section 25744 of the Public Resources Code. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code. This subdivision may not be construed to apply retroactively.

(e) If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

SEC. 7. Section 399.6 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is repealed.

SEC. 8. Section 399.8 of the Public Utilities Code, as amended by Section 1 of Chapter 770 of the Statutes of 2001, is repealed.

SEC. 9. Section 399.8 of the Public Utilities Code, as amended by Section 2 of Chapter 770 of the Statutes of 2001, is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars ($135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 383, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost-effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

(h) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

SEC. 10. Section 445 of the Public Utilities Code is repealed.

CHAPTER 667

An act to amend Sections 6750, 6752, and 6753 of the Family Code, and to add Section 1308.9 to the Labor Code, relating to minors.

[Approved by Governor October 2, 2003. Filed with
Secretary of State October 3, 2003.]

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

SECTION 1. Section 6750 of the Family Code is amended to read:

6750. (a) This chapter applies to the following contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2000:

(1) A contract pursuant to which a minor is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company), or through a casting agency. ''Artistic or creative services'' includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(2) A contract pursuant to which a minor agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.

(3) A contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport.

(b) (1) If a minor is employed or agrees to render services directly for any person or entity, that person or entity shall be considered the minor's employer for purposes of this chapter.

(2) If a minor's services are being rendered through a third-party individual or personal services corporation (loan-out company), the person to whom or entity to which that third party is providing the minor's services shall be considered the minor's employer for purposes of this chapter.

(3) If a minor renders services as an extra, background performer, or in a similar capacity through an agency or service that provides one or more of those performers for a fee (casting agency), the agency or service shall be considered the minor's employer for the purposes of this chapter.

(c) (1) For purposes of this chapter, the minor's ''gross earnings'' shall mean the total compensation payable to the minor under the contract or, if the minor's services are being rendered through a third-party individual or personal services corporation (loan-out

company), the total compensation payable to that third party for the services of the minor.

(2) Notwithstanding paragraph (1), with respect to contracts pursuant to which a minor is employed or agrees to render services as a musician, singer, songwriter, musical producer, or arranger only, for purposes of this chapter, the minor's ''gross earnings'' shall mean the total amount paid to the minor pursuant to the contract, including the payment of any advances to the minor pursuant to the contract, but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract, or, if the minor's services are being rendered through a third-party individual or personal services corporation (loan-out company), the total amount payable to that third party for the services of the minor.

SEC. 2. Section 6752 of the Family Code is amended to read:

6752. (a) A parent or guardian entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750 shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(b) (1) Notwithstanding any other statute, in an order approving a minor's contract of a type described in Section 6750, the court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753.

(2) The court shall require that at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the order is issued be appointed as trustee of the funds ordered to be set aside in trust for the benefit of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(3) Within 10 business days after commencement of employment, the trustee or trustees of the funds ordered to be set aside in trust shall provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753. Upon presentation of the trustee's statement offered pursuant to this subdivision, the employer shall provide the parent or guardian with a written acknowledgement of receipt of the statement.

(4) The minor's employer shall deposit or disburse the 15 percent of the minor's gross earnings pursuant to the contract within 15 business days after receiving a true and accurate copy of the trustee's statement

pursuant to subdivision (c) of Section 6753, a certified copy of the minor's birth certificate, and, in the case of a guardian, a certified copy of the court document appointing the person as the minor's guardian. Notwithstanding any other provision of law, pending receipt of these documents, the minor's employer shall hold, for the benefit of the minor, the 15 percent of the minor's gross earnings pursuant to the contract.

(5) When making the initial deposit of funds, the minor's employer shall provide written notification to the financial institution or company that the funds are subject to Section 6753. Upon receipt of the court order, the minor's employer shall provide the financial institution with a copy of the order.

(6) Once the minor's employer deposits the set aside funds pursuant to Section 6753, in trust, in an account or other savings plan, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(7) The court shall have continuing jurisdiction over the trust established pursuant to the order and may at any time, upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.

(8) A parent or guardian entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (7) amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.

(9) (A) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753 within 180 days after the commencement of employment, the employer shall forward to The Actors' Fund of

America 15 percent of the minor's gross earnings pursuant to the contract, together with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds, The Actors' Fund of America shall become the trustee of those funds and the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(B) The Actors' Fund of America shall make its best efforts to notify the parent, guardian, or trustee of their responsibilities to provide a true and accurate photocopy of the trustee's statement pursuant to Section 6753, and in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian. Within 15 business days after receiving those documents, The Actors' Fund of America shall deposit or disburse the funds as directed by the trustee's statement. When making that deposit or disbursal of the funds, The Actors' Fund of America shall provide to the financial institution notice that the funds are subject to Section 6753 and a copy of each applicable order, and shall thereafter have no further obligation or duty to monitor or account for the funds.

(c) The Actors' Fund of America shall notify each beneficiary of his or her entitlement to the funds that it holds for the beneficiary within 60 days after the date on which its records indicated that the beneficiary has attained 18 years of age or the date on which it received notice that the minor has been emancipated, by sending that notice to the last known address for the beneficiary or, if it has no specific separate address for the beneficiary, to the beneficiary's parent or guardian.

(d) (1) Notwithstanding any other statute, for any minor's contract of a type described in Section 6750 that is not being submitted for approval by the court pursuant to Section 6751, or for which the court has issued a final order denying approval, 15 percent of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(2) Within 10 business days of commencement after employment, a parent or guardian, as the case may be, entitled to the physical custody,

care, and control of the minor shall provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian. Upon presentation of the trustee's statement offered pursuant to this subdivision, the employer shall provide the parent or guardian with a written acknowledgement of receipt of the statement.

(3) The minor's employer shall deposit 15 percent of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to Section 6753, or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the 15 percent of the minor's gross earnings pursuant to the contract. When making the initial deposit of funds, the minor's employer shall provide written notification to the financial institution or company that the funds are subject to Section 6753.

(4) Once the minor's employer deposits the set aside funds in trust, in an account or other savings plan pursuant to Section 6753, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(5) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.

(6) A parent or guardian entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (5) amending or terminating the

employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.

(7) (A) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753, within 180 days after commencement of employment, the employer shall forward to The Actors' Fund of America the 15 percent of the minor's gross earnings pursuant to the contract, together with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and the title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds, The Actors' Fund of America shall become the trustee of those funds and the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(B) The Actors' Fund of America shall make best efforts to notify the parent, guardian, or trustee of their responsibilities to provide a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian. After receiving those documents, The Actors' Fund of America shall deposit or disburse the funds as directed by the trustee's statement, and in accordance with Section 6753, within 15 business days. When making that deposit or disbursal of the funds, The Actors' Fund of America shall provide notice to the financial institution that the funds are subject to Section 6753, and shall thereafter have no further obligation or duty to monitor or account for the funds.

(C) The Actors' Fund of America shall notify each beneficiary of his or her entitlement to the funds that it holds for the beneficiary, within 60 days after the date on which its records indicate that the beneficiary has attained 18 years of age or the date on which it received notice that the minor has been emancipated, by sending that notice to the last known address that it has for the beneficiary, or to the beneficiary's parent or guardian, where it has no specific separate address for the beneficiary.

(e) Where a parent or guardian is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750, the relationship between the parent or guardian and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not

limited to, payments for taxes on all earnings, including taxes on the amounts set aside under subdivisions (b) and (c) of this section, and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subdivision shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(f) (1) Except as otherwise provided in this subdivision, The Actors' Fund of America, as trustee of unclaimed set-aside funds, shall manage and administer those funds in the same manner as a trustee under the Probate Code. Notwithstanding the foregoing, The Actors' Fund of America is not required to open separate, segregated individual trust accounts for each beneficiary but may hold the set-aside funds in a single, segregated master account for all beneficiaries, provided it maintains accounting records for each beneficiary's interest in the master account.

(2) The Actors' Fund of America shall have the right to transfer funds from the master account, or from a beneficiary's segregated account to its general account in an amount equal to the beneficiary's balance. The Actors' Fund of America shall have the right to use those funds transferred to its general account to provide programs and services for young performers. This use of the funds does not limit or alter The Actors' Fund of America's obligation to disburse the set-aside funds to the beneficiary, or the beneficiary's parent, guardian, trustee, or estate pursuant to this chapter.

(3) (A) Upon receiving a certified copy of the beneficiary's birth certificate, or United States passport, and a true and accurate photocopy of the trustee's statement pursuant to Section 6753, The Actors' Fund of America shall transfer the beneficiary's balance to the trust account established for the beneficiary.

(B) The Actors' Fund of America shall disburse the set-aside funds to a beneficiary who has attained 18 years of age, after receiving proof of the beneficiary's identity and a certified copy of the beneficiary's birth certificate or United States passport, or to a beneficiary who has been emancipated, after receiving proof of the beneficiary's identity and appropriate documentation evidencing the beneficiary's emancipation.

(C) The Actors' Fund of America shall disburse the set-aside funds to the estate of a deceased beneficiary after receiving appropriate documentation evidencing the death of the beneficiary and the claimant's authority to collect those funds on behalf of the beneficiary.

(g) (1) The beneficiary of an account held by The Actors' Fund of America pursuant to this section shall be entitled to receive imputed interest on the balance in his or her account for the entire period during which the account is held at a rate equal to the lesser of the federal reserve rate in effect on the last business day of the prior calendar quarter or the

national average money market rate as published in the New York Times on the last Sunday of the prior calendar quarter, adjusted quarterly.

(2) The Actors' Fund of America may assess and deduct from the balance in the beneficiary's account reasonable management, administrative, and investment expenses, including beneficiary-specific fees for initial set up, account notifications and account disbursements, and a reasonably allocable share of management, administrative, and investment expenses of the master account. No fees may be charged to any beneficiary's account during the first year that the account is held by The Actors' Fund of America.

(3) Notwithstanding paragraph (2), the amount paid on any claim made by a beneficiary or the beneficiary's parent or guardian after The Actors' Fund of America receives and holds funds pursuant to this section may not be less than the amount of the funds received plus the imputed interest.

(h) Notwithstanding any provision of this chapter to the contrary, any minor's employer holding set-aside funds under this chapter, which funds remain unclaimed 180 days after the effective date hereof, shall forward those unclaimed funds to The Actors' Fund of America, along with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and the title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds by The Actors' Fund of America, the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(i) All funds received by The Actors' Fund of America pursuant to this section shall be exempt from the application of the Unclaimed Property Law (Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure), including, but not limited to, Section 1510 of the Code of Civil Procedure.

SEC. 3. Section 6753 of the Family Code is amended to read:

6753. (a) The trustee or trustees shall establish a trust account, that shall be known as a Coogan Trust Account, pursuant to this section at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, that is located in the State of California, unless a similar trust has been previously established, for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings pursuant to paragraph (1) of subdivision (b) of Section 6752 or pursuant to paragraph (1) of subdivision (c) of Section 6752. The trustee or trustees shall establish the trust pursuant to this section within seven business days after the minor's

contract is signed by the minor, the third-party individual or personal services corporation (loan-out company), and the employer.

(b) Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation of the minor under Section 7122, no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court pursuant to paragraph (7) of subdivision (b) or paragraph (5) of subdivision (c) of Section 6752. Upon reaching the age of 18 years, the beneficiary may withdraw the funds on deposit in trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.

(c) The trustee or trustees shall, within 10 business days after the minor's contract is signed by the minor, the third-party individual or personal services corporation (loan-out company), and the employer, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the minor's employer to deposit into the account the portion of the minor's gross earnings prescribed by paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) of Section 6752. The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

(d) The trust shall be established in California either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to ensure that the funds remain in trust, in an account or other savings plan insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(e) Upon application by the trustee or trustees to the financial institution or company in which the trust is held, the trust funds shall be handled by the financial institution or company in one or more of the following methods:

(1) The financial institution or company may transfer funds to another account or other savings plan at the same financial institution or

company, provided that the funds transferred shall continue to be held in trust, and subject to this chapter.

(2) The financial institution or company may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust, and subject to this chapter and that the transferring financial institution or company has provided written notification to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this chapter.

(3) The financial institution or company may use all or a part of the funds to purchase, in the name of and for the benefit of the minor, (A) investment funds offered by a company registered under the Investment Company Act of 1940, provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars ($250,000,000); or (B) government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and bonds, certificates, instruments, and accounts, that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds shall continue to be held in trust and subject to this chapter, those purchases shall have a maturity date on or before the date upon which the minor will attain the age of 18 years, and any proceeds accruing from those purchases shall be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

SEC. 4. Section 1308.9 is added to the Labor Code, to read:

1308.9. (a) If the Labor Commissioner provides written consent pursuant to Section 1308.5 for the employment of a minor under a contract described in Section 6750 of the Family Code, that consent shall be void after the expiration of 10 business days from the date written consent was granted, unless it is attached to a true and correct copy of the trustee's statement evidencing the establishment on behalf of the minor of a ''Coogan Trust Account'' pursuant to Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code. If the written consent is attached to a true and correct copy of that trustee's statement, the written consent shall be valid for a six-month period.

(b) A person may not apply for the written consent of the Labor Commissioner to employ the same minor under a contract described in Section 6750 of the Family Code more than once in any six-month period. If written consent is issued by the Labor Commissioner for the employment of the same minor more than once within any six-month

period, the earliest dated written consent shall be valid and any other written consent issued during that six-month period shall be void.

CHAPTER 668

An act to amend Section 17213 of the Education Code, and to amend Section 21151.8 of the Public Resources Code, relating to public schools.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

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

(a) Many studies have shown significantly increased levels of pollutants, particularly diesel particulates, in close proximity to freeways and other major diesel sources. A recent study of Los Angeles area freeways measured diesel particulate levels up to 25 times higher near freeways than those levels elsewhere. Much of the pollution from freeways is associated with acute health effects, exacerbating asthma and negatively impacting the ability of children to learn.

(b) Cars and trucks release at least forty different toxic air contaminants, including, but not limited to, diesel particulate, benzene, formaldehyde, 1,3-butadiene and acetaldehyde. Levels of these pollutants are generally concentrated within 500 feet of freeways and very busy roadways.

(c) Current state law governing the siting of schools does not specify whether busy freeways should be included in environmental impact reports of nearby ''facilities.'' Over 150 schools are already estimated to be within 500 feet of extremely high traffic roadways.

(d) A disproportionate number of economically disadvantaged pupils may be attending schools that are close to busy roads, putting them at an increased risk of developing bronchitis from elevated levels of several pollutants associated with traffic. Many studies have confirmed that increased wheezing and bronchitis occurs among children living in high traffic areas.

(e) It is therefore the intent of the Legislature to protect school children from the health risks posed by pollution from heavy freeway traffic and other nonstationary sources in the same way that they are protected from industrial pollution.

SEC. 2. Section 17213 of the Education Code is amended to read:

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site, unless if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has

jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) ''Hazardous air emissions'' means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) ''Hazardous substance'' means any substance defined in Section 25316 of the Health and Safety Code.

(3) ''Acutely hazardous material'' means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(4) ''Hazardous waste'' means any waste defined in Section 25117 of the Health and Safety Code.

(5) ''Hazardous waste disposal site'' means any site defined in Section 25114 of the Health and Safety Code.

(6) ''Administering agency'' means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) ''Handle'' means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) ''Facilities'' means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) ''Freeway or other busy traffic corridors'' means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 3. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area,

to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) ''Hazardous substance'' means any substance defined in Section 25316 of the Health and Safety Code.

(2) ''Acutely hazardous material'' means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) ''Hazardous waste'' means any waste defined in Section 25117 of the Health and Safety Code.

(4) ''Hazardous waste disposal site'' means any site defined in Section 25114 of the Health and Safety Code.

(5) ''Hazardous air emissions'' means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) ''Administering agency'' means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) ''Handle'' means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) ''Facilities'' means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) ''Freeway or other busy traffic corridors'' means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

CHAPTER 669

An act to amend and repeal Section 52244 of the Education Code, relating to public schools.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 52244 of the Education Code is amended to read:

52244. (a) There is hereby established a pilot grant program for the purpose of awarding grants to cover the costs of advanced placement examination fees. The State Department of Education shall administer this program.

(b) Any school district may apply to the State Department of Education for grant funding pursuant to this section, based on the number of economically disadvantaged pupils in the district enrolled in advanced placement courses who will take the next offered advanced placement examinations. A school district that applies to the State Department of Education for this purpose shall designate school district staff to whom pupils may submit applications for grants and shall institute a plan to notify pupils of the availability of financial assistance pursuant to this section. Grants shall be expended only to pay the fees required of pupils to take an advanced placement examination.

(c) Any economically disadvantaged pupil who is enrolled in an advanced placement course may apply to the designated school district staff for a grant pursuant to this section. A pupil who receives a grant shall pay five dollars ($5) of the examination fee.

(d) School districts and county superintendents of schools may join together and form collaboratives or consortia in order to participate in the grant program established by this section.

(e) Grants provided pursuant to this section may not be used to supplant fee waivers available to low-income pupils who take advanced placement examinations.

(f) If the total school district applications exceed the total funds available pursuant to this section, the State Department of Education shall prorate the grants based upon the ratio of the total amount requested to the total amount budgeted by the state for this purpose.

(g) To facilitate program administration and school district reimbursement, the State Department of Education may enter into a contract with the provider of advanced placement examinations. For purposes of the contract authorized pursuant to this subdivision, the State Department of Education is exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(h) 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 before January 1, 2008, deletes or extends that date.

CHAPTER 670

An act to add Section 653z to the Penal Code, relating to crime.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 653z is added to the Penal Code, to read:

653z. (a) Every person who operates a recording device in a motion picture theater while a motion picture is being exhibited, for the purpose of recording a theatrical motion picture and without the express written authority of the owner of the motion picture theater, is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

(b) For the purposes of this section, the following terms have the following meanings:

(1) ''Recording device'' means a photographic, digital or video camera, or other audio or video recording device capable of recording the sounds and images of a motion picture or any portion of a motion picture.

(2) ''Motion picture theater'' means a theater or other premises in which a motion picture is exhibited.

(c) Nothing in this section shall preclude prosecution under any other provision of law.

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

CHAPTER 671

An act to amend Section 12940 of the Government Code, relating to unlawful employment practices.

[Approved by Governor October 3, 2003. Filed with Secretary of State October 3, 2003.]

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

SECTION 1. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(5) Nothing in this part prohibits an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way

against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this part prohibits an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make

any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's

religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 2. It is the intent of the Legislature in enacting this act to construe and clarify the meaning and effect of existing law and to reject the interpretation given to the law in Salazar v. Diversified Paratransit, Inc. (2002) 103 Cal.App.4th 131.

CHAPTER 672

An act to add Chapter 8 (commencing with Section 127670) to Part 2 of Division 107 of the Health and Safety Code, relating to health care coverage.

[Approved by Governor October 5, 2003. Filed with Secretary of State October 6, 2003.]

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

SECTION 1. Chapter 8 (commencing with Section 127670) is added to Part 2 of Division 107 of the Health and Safety Code, to read:

CHAPTER 8. CALIFORNIA HEALTH CARE QUALITY COST CONTAINMENT COMMISSION

127670. The Legislature finds and declares the following:

(a) California's health care system needs to be reformed to provide high quality accessible, affordable, and equitable care and treatment.

(b) Too many Californians are unable to obtain affordable, high quality health care.

(c) The rising costs associated with health care are driven by numerous factors, including, but not limited to, the following:

(1) Prescription drug spending, including costs of research and development and marketing and increased drug utilization.

(2) Hospital rates.

(3) Health insurance premium rates.

(4) Provider rates.

(5) Health system inefficiencies.

(6) Fraud and abuse in the health care system.

(7) Technology development and utilization.

(8) Emergency room overutilization.

(9) Inequitable allocation of services and treatment to different segments of the population.

(10) Cost shifting, which occurs when the costs of providing uncompensated health care to uninsured individuals is shifted to those with health insurance driving health care prices and insurance premiums higher.

(d) Health care cost containment is an important part of enabling the health care coverage system to provide high quality care in a manner that improves patient outcomes.

(e) Evidence-based medicine may improve cost-effectiveness and care to patients by using scientific evidence to determine clinical practice, drug therapy, and other measures that improve the quality of care in a cost-effective manner while taking into account the special needs of individual patients. To improve quality as well as cost-effectiveness, evidence-based medicine should take into account the special needs of persons with disabilities as well as the racial, ethnic, and gender disparities in health research and the provision of health care.

(f) Chronic diseases, such as heart disease, stroke, asthma, cancer, and diabetes, are among the most prevalent, costly, and preventable of all health problems. Seventy-eight percent of health care costs can be

attributed to the treatment of chronic conditions. ''Disease management'' provides a strategy to improve patient health outcomes and limit health care spending by identifying and monitoring high-risk populations, helping patients and providers better adhere to proven interventions, engaging patients in their own care management, and establishing more coordinated care interventions and follow-up systems to prevent unnecessary and expensive health complications. These disease management strategies should be tailored to fit the needs of each patient. Disease management is most effective when it takes into account racial, ethnic, and gender disparities in health research and the provision of health care.

(g) Without reform, California's health care system may fail to deliver the affordable quality care that all Californians deserve.

(h) It is the intent of the Legislature to make available valid performance information to encourage hospitals and physicians to provide care that is safe, medically effective, patient-centered, timely, efficient, and equitable. It is also the intent of the Legislature to strengthen the ability of the Office of Statewide Health Planning and Development to put hospital performance information into the hands of consumers, purchasers, and providers.

(i) It is the intent of the Legislature to encourage health care service plans, health insurers, and providers to develop innovative approaches, services, and programs that may have the potential to deliver health care that is both cost-effective and responsive to the needs of enrollees.

127671. (a) The Governor shall convene the California Health Care Quality Improvement and Cost Containment Commission, hereinafter referred to as ''the commission,'' to research and recommend appropriate and timely strategies for promoting high quality care and containing health care costs.

(b) The commission shall be composed of 27 members who are knowledgeable about the health care system and health care spending.

(c) The Governor shall appoint 17 members of the commission, as follows:

(1) Three representatives of California's business community, including at least one representative from a small business.

(2) Two representatives from organized labor, one of whom represents health care workers.

(3) Two representatives of consumers.

(4) Two health care practitioners, including at least one physician.

(5) One representative of the disabilities community.

(6) One hospital industry representative.

(7) One pharmaceutical industry representative.

(8) Two representatives of the health insurance industry, one with expertise in managed health care delivery systems and one with expertise in health insurance underwriting and rating.

(9) One representative of academic or health care policy research institutions.

(10) One health care economist.

(11) One expert in disease management techniques and wellness programs.

(d) The Senate Committee on Rules shall appoint four members, with two members from the majority party and two from the minority party.

(e) The Speaker of the Assembly shall appoint four members, of which two members shall be the Chair and Vice Chair of the Assembly Committee on Health.

(f) The Secretary of the Health and Human Services Agency and the Director of the Department of Managed Health Care shall serve as members of the commission.

(g) The Governor shall appoint the chairperson of the commission.

(h) The commission shall, on or before January 1, 2005, issue a report to the Legislature and the Governor making recommendations for health care quality improvement and cost containment. The commission shall, at a minimum, examine and address the following issues:

(1) Assessing California health care needs and available resources.

(2) Lowering the cost of health care coverage.

(3) Increasing patient choices of health coverage options and providers.

(4) Improving the quality of health care.

(5) Increasing the transparency of health care costs and the relative efficiency with which care is delivered.

(6) Potential for integration with workers' compensation insurance.

(7) Use of disease management, wellness, prevention, and other innovative programs to keep people healthy while reducing costs and improving health outcomes.

(8) Consolidation of existing state programs to achieve efficiencies where possible.

(9) Efficient utilization of prescription drugs and technology.

(h) Notwithstanding any other provision of law, the members of the task force shall receive no per diem or travel expense reimbursement, or any other expense reimbursement.

CHAPTER 673

An act to amend Section 6254 of the Government Code, to add Article 3.11 (commencing with Section 1357.20) to Chapter 2.2 of Division 2 of the Health and Safety Code, to add Section 12693.55 to, and to add Chapter 8.1 (commencing with Section 10760) to Part 2 of Division 2 of, the Insurance Code, to add Part 8.7 (commencing with Section 2120) to Division 2 of the Labor Code, to amend Section 131 of, and to add Section 976.7 to, the Unemployment Insurance Code, and to amend Section 14124.91 of, and to add Sections 14105.981, 14124.915, and 14124.916 to, the Welfare and Institutions Code, relating to health care coverage, and making an appropriation therefor.

[Approved by Governor October 5, 2003. Filed with Secretary of State October 6, 2003.]

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

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

(a) The Legislature finds and declares that working Californians and their families should have health insurance coverage.

(b) The Legislature further finds and declares that most working Californians obtain their health insurance coverage through their employment.

(c) The Legislature finds and declares that in 2001, more than 6,000,000 Californians lacked health insurance coverage at some time and 3,600,000 Californians had no health insurance coverage at any time.

(d) The Legislature finds and declares that more than 80 percent of Californians without health insurance coverage are working people or their families. Most of these working Californians without health insurance coverage work for employers who do not offer health benefits.

(e) The Legislature finds and declares that employment-based health insurance coverage provides access for millions of Californians to the latest advances in medical science, including diagnostic procedures, surgical interventions, and pharmaceutical therapies.

(f) The Legislature finds and declares that people who are covered by health insurance have better health outcomes than those who lack coverage. Persons without health insurance are more likely to be in poor health, more likely to have missed needed medications and treatment, and more likely to have chronic conditions that are not properly managed.

(g) The Legislature finds and declares that persons without health insurance are at risk of financial ruin and that medical debt is the second most common cause of personal bankruptcy in the United States.

(h) The Legislature further finds and declares that the State of California provides health insurance to low- and moderate-income working parents and their children through the Medi-Cal and Healthy Families programs and pays the cost of coverage for those working people who are not provided health coverage through employment. The Legislature further finds and declares that the State of California and local governments fund county hospitals and clinics, community clinics, and other safety net providers that provide care to those working people whose employers fail to provide affordable health coverage to workers and their families as well as to other uninsured persons.

(i) The Legislature further finds and declares that controlling health care costs can be more readily achieved if a greater share of working people and their families have health benefits so that cost shifting is minimized.

(j) The Legislature finds and declares that the social and economic burden created by the lack of health coverage for some workers and their dependents creates a burden on other employers, the State of California, affected workers, and the families of affected workers who suffer ill health and risk financial ruin.

(k) It is therefore the intent of the Legislature to assure that working Californians and their families have health benefits and that employers pay a user fee to the State of California so that the state may serve as a purchasing agent to pool those fees to purchase coverage for all working Californians and their families that is not tied to employment with an individual employer. However, consistent with this act, if the employer voluntarily provides proof of health care coverage, that employer is to be exempted from payment of the fee.

(*l*) It is further the intent of the Legislature that workers who work on a seasonal basis, for multiple employers, or who work multiple jobs for the same employer should be afforded the opportunity to have health coverage in the same manner as those who work full-time for a single employer.

(m) The Legislature recognizes the vital role played by the health care safety net and the potential impact this act may have on the resources available to county hospital systems and clinics, including physicians or networks of physicians that refer patients to such hospitals and clinics, as well as community clinics and other safety net providers. It is the intent of the Legislature to preserve the viability of this important health care resource.

(n) Nothing in this act shall be construed to diminish or otherwise change existing protections in law for persons eligible for public programs including, but not limited to, Medi-Cal, Healthy Families, California Children's Services, Genetically Handicapped Persons Program, county mental health programs, programs administered by the

Department of Alcohol and Drug Programs, or programs administered by local education agencies. It is further the intent of the Legislature to preserve benefits available to the recipients of these programs, including dental, vision, and mental health benefits.

SEC. 2. Part 8.7 (commencing with Section 2120) is added to Division 2 of the Labor Code, to read:

PART 8.7. EMPLOYEE HEALTH INSURANCE

CHAPTER 1. TITLE AND PURPOSE

2120. This part shall be known and may be cited as the Health Insurance Act of 2003.

2120.1. (a) Large employers, as defined in Section 2122.3, shall comply with the provisions of this part applicable to large employers commencing on January 1, 2006.

(b) Medium employers, as defined in Section 2122.4, shall comply with the provisions of this part applicable to medium employers commencing on January 1, 2007, except that those employers with at least 20 employees but no more than 49 employees are not required to comply with the provisions of this part unless a tax credit is enacted that is available to those employers with at least 20 employees but no more than 49 employees. The tax credit shall be 20 percent of net cost to the employer of the fee owed under Chapter 4 (commencing with Section 2140). ''Net cost'' means the dollar amount of the employer fee or the credit consistent with Section 2160.1 reduced by the employee share of that fee or credit and further reduced by the value of state and federal tax deductions.

2120.2. It is the purpose of this part to ensure that working Californians and their families are provided health care coverage.

2120.3. This part shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that are more favorable to the employees than the health care coverage required by this part.

CHAPTER 2. DEFINITIONS

2122. Unless the context requires otherwise, the definitions set forth in this chapter shall govern the construction and meaning of the terms and phrases used in this part.

2122.1. ''Dependent'' means the spouse, domestic partner, minor child of a covered enrollee, or child 18 years of age and over who is dependent on the enrollee, as specified by the board. ''Dependent'' does not include a dependent who is provided coverage by another employer

or who is an eligible enrollee as a consequence of that dependent's employment status.

2122.2. ''Enrollee'' means a person who works at least 100 hours per month for any individual employer and has worked for that employer for three months. The term includes sole proprietors or partners of a partnership, if they are actively engaged at least 100 hours per month in that business.

2122.3. ''Large employer'' means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary 200 or more persons to work in this state.

2122.4. ''Medium employer'' means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary at least 20 but no more than 199 persons to work in this state.

2122.5. ''Small employer'' means a person, as defined in Section 7701(a) of the Internal Revenue Code, or public or private entity employing for wages or salary at least 2 but no more than 19 persons to work in this state.

2122.6. ''Employer'' means an employing unit as defined in Section 135 of the Unemployment Insurance Code, that is either a large employer or medium employer, as defined in Sections 2122.3 and 2122.4. For purposes of this part, an employer shall include all of the members of a controlled group of corporations. A ''controlled group of corporations'' means controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code, except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in Section 1563(a)(1) of the Internal Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

2122.7. ''Principal employer'' means the employer for whom an enrollee works the greatest number of hours in any month.

2122.8. ''Wages'' means wages as defined in subdivision (a) of Section 200 paid directly to an individual by his or her employer.

2122.9. ''Fund'' means the State Health Purchasing Fund created pursuant to Section 2210.

2122.10. ''Program'' means the State Health Purchasing Program, which includes a purchasing pool providing health care coverage for enrollees, and, if applicable, their dependents, which will be financed by fees paid by employers and contributions by enrollees.

2122.11. ''Board'' means the Managed Risk Medical Insurance Board.

2122.12. ''Fee'' means the fee as determined in Chapter 4 (commencing with Section 2140).

CHAPTER 3. STATE HEALTH PURCHASING PROGRAM

2130. The State Health Purchasing Program is hereby created. The program shall be managed by the Managed Risk Medical Insurance Board, which shall have those powers granted to the board with respect to the Healthy Families Program under Section 12693.21 of the Insurance Code, except that the emergency regulation authority referenced in subdivision (o) of that section shall only be in effect for this program from the effective date of this part until three years after the requirements of this program are in effect for large and medium employers as provided in Section 2120.1.

2130.1. Notwithstanding any other provisions of law to the contrary, the board shall have authority and fiduciary responsibility for the administration of the program, including sole and exclusive fiduciary responsibility over the assets of the fund. The board shall also have sole and exclusive responsibility to administer the program in a manner that will assure prompt delivery of benefits and related services to the enrollees, and, if applicable, dependents, including sole and exclusive responsibility over contract, budget, and personnel matters. Nothing in this section shall preclude legislative or state auditor oversight over the program.

2130.2. The board shall arrange coverage for enrollees, and, if applicable, dependents eligible under this part by establishing and maintaining a purchasing pool. The board shall negotiate contracts with those health care service plans and health insurers that choose to participate for the benefit package described in this part and shall not self-insure or partially self-insure the health care benefits under this part.

2130.3. The health care benefits coverage provided to enrollees, and, if applicable, dependents, shall be equivalent to the coverage required under subdivision (a) or (b) of Section 2160.1.

2130.4. The program shall be funded by employer fees and enrollee contributions as described in this part. The board shall administer the program in a manner that assures that the fees and enrollee contributions collected pursuant to this part are sufficient to fund the program, including administrative costs.

CHAPTER 4. EMPLOYER FEE

2140. Except as otherwise provided in this part, every large employer and every medium employer shall pay a fee as specified in this chapter.

2140.1. The board shall establish the level of the fee by determining the total amount necessary to pay for health care for all enrollees, and, if applicable, their dependents eligible for the program. In setting the fee

the board may include costs associated with the administration of the fund, including those costs associated with collection of the fee and its enforcement by the Employment Development Department. The program implemented pursuant to this part shall be fully supported by the fees and enrollee contributions collected pursuant to this part. The fees and enrollee contributions collected pursuant to this part shall not be used for any purpose other than providing health coverage for enrollees and, if applicable, their dependents, as well as costs associated with the administration of the fund and with collection of the fee and its enforcement by the Employment Development Department.

2140.2. The board shall provide notice to the Employment Development Department of the amount of the fee in a time and manner that permits the Employment Development Department to provide notice to all employers of the estimated fee for the budget year pursuant to Section 976.7 of the Unemployment Insurance Code.

2140.3. The Employment Development Department shall waive the fee of any employer that is entitled to a credit under the terms of this part. The Employment Development Department shall specify the manner and means by which that credit may be claimed by an employer.

2140.4. Revenue from the fee and from the enrollee contributions specified in this part shall be deposited into the fund.

2140.5. The fee paid by employers shall be based on the cost of coverage for all enrollees, and, if applicable, their dependents. The fee to be paid by each employer shall be based on the number of potential enrollees, and if applicable, dependents, using the employer's own workforce on a date specified by the board as the basis for the allocation and such other factors as the board may determine in order to provide coverage that meets the standards of this part. To assist the board in determining the fee, each employer shall provide to the board information as specified by the board regarding potential enrollees, and, if applicable, dependents. To the extent feasible, the board shall work with the Employment Development Department to facilitate the provision of information regarding the number of potential enrollees and dependents.

2140.6. A large employer shall pay a fee to the fund for the purpose of providing health care coverage pursuant to this part. The fee paid by a large employer shall be based on the number of enrollees and dependents.

2140.7. A medium employer shall pay a fee to the fund for the purpose of providing health care coverage pursuant to this part. The fee paid by a medium employer shall be based on the number of enrollees.

2140.8. Coverage of an enrollee or, if applicable, dependents shall not be contingent upon payment of the fee required pursuant to this part by the employer of that enrollee or, if applicable, dependents. If an

employer fails to pay the required fee, for whatever reason, the employer shall be responsible to the fund for payment of a penalty of 200 percent of the amount of any fee that would have otherwise been paid by the employer including for the period that the enrollee and, if applicable, dependents should have received coverage but for the employer's conduct in violation of this section.

2140.9. All amounts due and unpaid under this part, including unpaid penalties, shall bear interest in accordance with Section 1129 of the Unemployment Insurance Code.

2140.10. Nothing in this part shall preclude an employer from purchasing additional benefits or coverage, in addition to paying the fee.

CHAPTER 5. ENROLLEE CONTRIBUTION

2150. The applicable enrollee contribution, not to exceed 20 percent of the fee assessed to the employer, shall be collected by the employer and paid concurrently with the employer fee. The employer may agree to pay more than 80 percent of the fee, resulting in an enrollee, and, if applicable, dependent contribution of less than 20 percent. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, as specified annually by the United States Department of Health and Human Services, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages.

2150.1. (a) The board shall establish the required enrollee and dependent deductibles, coinsurance or copayment levels for specific benefits, including total annual out-of-pocket cost.

(b) No out-of-pocket costs other than copayments, coinsurance, and deductibles in accordance with this section shall be charged to enrollees and dependents for health benefits.

(c) In determining the required enrollee and dependent deductibles, coinsurance, and copayments, the board shall consider whether the proposed copayments, coinsurance, and deductibles deter enrollees and dependents from receiving appropriate and timely care, including those enrollees with low or moderate family incomes. The board shall also consider the impact of out-of-pocket costs on the ability of employers to pay the fee.

This section shall apply to coverage provided through the program only and is not intended to apply coverage that is not provided through the program.

2150.2. In the event that the employer fails to collect or transmit the enrollee contribution provided for under this part in a timely manner, the employer shall become liable for a penalty of 200 percent of the amount that the employer has failed to collect or transmit, and the employee shall be relieved of all liability for that failure. In no event shall the employer's failure to collect or transmit the required enrollee's contribution or to provide enrollment information about an employee affect the employee's coverage arranged pursuant to Chapter 3 (commencing with Section 2130), nor may an employer withhold or collect any amount that is not withheld and transmitted in the manner and at such times as specified by the Employment Development Department pursuant to this part. An employee for whom enrollment information is not otherwise received by the board may demonstrate eligibility for coverage by any reliable means of demonstrating employment as provided for in regulation. To the extent feasible, the board shall work with the Employment Development Department to facilitate the provision of information regarding the eligibility of enrollees and to provide information regarding any failure of an employer to collect or transmit employee contributions as required by this part.

CHAPTER 6. EMPLOYER CREDIT AGAINST THE FEE

2160. An employer required to pay a fee to the fund may apply to the Employment Development Department for a credit against the fee by providing proof of coverage for eligible enrollees and their dependents, if applicable, consistent with Section 2140.3.

2160.1. Proof of coverage shall be demonstrated by any of the following:

(a) Any health care coverage that meets the minimum requirements set forth in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(b) A group health insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses, provided the maximum out-of-pocket costs for insureds do not exceed the maximum out-of-pocket costs for enrollees of health care service plans providing benefits under a preferred provider organization policy. For the purposes of this section, a group health insurance policy shall not include Medicare supplement, vision-only, dental-only, and Champus-supplement insurance. For purposes of this section, a group health insurance policy shall not include hospital indemnity, accident-only, and specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(c) Any Taft-Hartley health and welfare fund or any other lawful collective bargaining agreement which provides for health and welfare

coverage for collective bargaining unit or other employees thereby covered.

(d) Any employer sponsored group health plan meeting the requirements of the federal Employee Retirement Income Security Act of 1974, provided it meets the benefits required under subdivision (a) or (b) of this section.

(e) A multiple employer welfare arrangement established pursuant to Section 742.20 of the Insurance Code, provided that its benefits have not changed after January 1, 2004, or that it meets the benefits required under subdivision (a) or (b) of this section.

(f) Coverage provided under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22850) of Division 5 of Title 2 of the Government Code, provided it meets the benefits required under subdivision (a) or (b) of this section or is otherwise collectively bargained.

(g) Health coverage provided by the University of California to students of the University of California who are also employed by the University of California.

2160.2. Nothing in this part shall preclude an employer from providing additional benefits or coverage.

2160.3. It shall be unlawful for an employer to designate an employee as an independent contractor or temporary employee, reduce an employee's hours of work, or terminate and rehire an employee if a purpose of which is to avoid the employer's obligations under this part. An employer that violates this section shall be responsible to the fund for a penalty of 200 percent of the amount of any fee that would have otherwise been paid by the employer including for the period that the enrollee, and, if applicable, dependents should have received coverage but for the employer's conduct in violation of this section. The rights established under this section shall not reduce any other rights established under any other provision of law.

2160.4. An employer shall not request or otherwise seek to obtain information concerning income or other eligibility requirements for public health benefit programs regarding an employee, dependent, or other family member of an employee, other than that information about the employee's employment status otherwise known to the employer consistent with existing state and federal law and regulation. For these purposes, public health benefit programs include, but are not limited to, the Medi-Cal program, Healthy Families Program, Major Risk Medical Insurance Program, and Access for Infants and Mothers program.

2160.5. The Employment Development Department shall adopt regulations to ensure that employers abide by the provisions of this chapter. The regulations may initially be adopted as emergency regulations in accordance with the Administrative Procedure Act

(Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, but those emergency regulations shall be in effect only from the effective date of this part until after the requirements of this program are in effect for large and medium employers as provided in Section 2120.1.

2160.7. (a) Any new employer or existing employer that previously was not subject to this part shall begin complying with all applicable provisions of this part within one month of the date it became subject to this part.

(b) Any existing employer previously subject to this part but no longer subject to this part shall notify the Employment Development Department in a manner prescribed by that department within 15 days of this change before discontinuing to comply with the provisions of this part.

CHAPTER 7. PARTICIPATING HEALTH PLANS

2170. Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care.

2171. The board shall contract only with insurers that can demonstrate compliance with Section 10761.2 of the Insurance Code and only with health care service plans that can demonstrate compliance with the requirements of Section 1357.23 of the Health and Safety Code.

2173. (a) The board shall develop and utilize appropriate cost containment measures to maximize the cost-effectiveness of health care coverage offered under the program. The board shall consider the findings of the California Health Care Quality Improvement and Cost Containment Commission.

(b) Health care service plans, health insurers, and providers are encouraged to develop innovative approaches, services, and programs that may have the potential to deliver health care that is both cost-effective and responsive to the needs of enrollees.

CHAPTER 8. ENROLLMENT AND COORDINATION WITH PUBLIC PROGRAMS

2190. (a) Employers shall provide information to the board regarding potential enrollees, and, if applicable, dependents as prescribed by the board to assist the board in obtaining information necessary for enrollment. In no case shall the board require the employer to obtain from the potential enrollee information about the family income or other eligibility requirements for Medi-Cal, Healthy Families, or other public programs other than that information about the

enrollee's employment status otherwise known to the employer consistent with existing state and federal law and regulation.

(b) The board shall obtain enrollment information from potential enrollees and, if applicable, dependents to be covered by the program. The enrollee may voluntarily provide information sufficient to determine whether the enrollee or dependents may be eligible for coverage under Medi-Cal, Healthy Families, or other public programs if the enrollee chooses to seek enrollment in those programs. The board shall use a uniform enrollment form for obtaining that information. The board shall provide information to enrollees covered by the program regarding the coverage available under the program and other programs, including Medi-Cal and Healthy Families, for which enrollees or dependents may be eligible.

2190.1. (a) An enrollee or dependent who would qualify for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 6 of the Welfare and Institutions Code and who chooses to provide information about eligibility for the Medi-Cal program shall be enrolled in the Medi-Cal program if determined by the State Department of Health Services to be eligible for that program and shall be charged share-of-cost, copays, coinsurance, or deductibles in accordance with the requirements of that program.

(b) An enrollee or dependent who would qualify for the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of the Insurance Code and who chooses to provide information about eligibility for the Healthy Families Program shall be enrolled in the Healthy Families Program if determined eligible for that program and shall be charged share-of-premium, copays, coinsurance, or deductibles in accordance with the requirements of that program.

2190.2. (a) The board shall provide to the State Department of Health Services information concerning the potential or continuing eligibility of enrollees and dependents in the program for Medi-Cal.

(b) (1) For those enrollees and dependents of the program who are determined to be eligible for Medi-Cal, the board shall provide the state share of financial participation for the cost of Medi-Cal coverage provided through the program.

(2) For those enrollees and dependents of the program who are determined to be eligible for Healthy Families, the board shall provide the state share of financial participation for the cost of Healthy Families coverage provided through the program.

(c) Nothing in this part shall affect the authority of the State Department of Health Services or the board to verify eligibility as required by federal law.

(d) The board shall have authority to make any necessary repayments of enrollee contributions to persons whose coverage is provided under

this section, and may also delegate to the State Department of Health Services the authority to repay those contributions.

(e) The State Department of Health Services shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

2190.3. Nothing in this part shall be construed to diminish or otherwise change existing protections in law for persons eligible for public programs, including, but not limited to, California Children's Services, Genetically Handicapped Persons Program, county mental health programs, programs administered by the Department of Alcohol and Drug Programs, or programs administered by local education agencies.

2190.4. In implementing this part, the board shall consult with organizations representing the interests of enrollees, particularly those who may be covered by public programs as well as family members, providers, advocacy organizations, and plans providing coverage under public programs.

CHAPTER 9. ADMINISTRATION

2200. A contract entered into by the board pursuant to this part shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services. The board shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual enrollee enrollments to a total amount not to exceed the amount appropriate for the program including applicable contributions.

2210. (a) The State Health Purchasing Fund is hereby created in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the board for the purposes specified in this part.

(b) The board shall authorize the expenditure from the fund of applicable employer fees and enrollee contributions that are deposited into the fund. This shall include the authority for the board to transfer funds to two separate special deposit funds to be established by the board pursuant to this part, and administered respectively by the State Department of Health Services and the board, to be used as the state's share of financial participation for the respective costs of Medi-Cal or Healthy Families coverage provided to enrollees, and, if applicable, dependents, who enroll in Medi-Cal or Healthy Families.

(c) Notwithstanding Section 2130.4, the board is authorized to obtain a loan from the General Fund for all necessary and reasonable expenses related to the establishment and administration of this part prior to the

collection of the employer fee. The proceeds of the loan are subject to appropriation in the annual Budget Act. The board shall repay principal and interest, using the rate of interest paid under the Pooled Money Investment Account, to the General Fund no later than five years after the first year of implementation of the employer fee.

SEC. 3. Article 3.11 (commencing with Section 1357.20) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 3.11. Insurance Market Reform

1357.20. If the provisions of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code are held invalid, then the provisions of this article shall become inoperative.

1357.21. (a) Notwithstanding any other provision of law, on and after January 1, 2006, except as specified in subdivision (b), all requirements in Article 3.1 (commencing with Section 1357) applicable to offering, marketing, and selling health care service plan contracts to small employers as defined in that article, including, but not limited to, the obligation to fairly and affirmatively offer, market, and sell all of the plan's contracts to all employers, guaranteed renewal of all health care service plan contracts, use of the risk adjustment factor, and the restriction of risk categories to age, geographic region, and family composition as described in that article, shall be applicable to all health care service plan contracts offered to all small and medium employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, except as follows:

(1) For small and medium employers with two to 50 eligible employees, all requirements in that article shall apply. As used in this article, ''small employer'' shall have the meaning as defined in Section 2122.5 of the Labor Code and ''medium employer'' shall have the meaning as defined in Section 2122.4 of the Labor Code, unless the context otherwise requires.

(2) For medium employers with 51 or more eligible employees, all requirements in that article shall apply, except that the health care service plan may develop health care coverage benefit plan designs to fairly and affirmatively market only to medium employer groups of 51 to 199 eligible employees, and apply a risk adjustment factor of no more than 115 percent and no less than 85 percent of the standard employee risk rate.

(b) Health care service plans shall be required to comply with this section only beginning with the date when coverage begins to be offered through the State Health Purchasing Program pursuant to Part 8.7 (commencing with Section 2120 of Division 2 of the Labor Code.

1357.22. On and after January 1, 2006, a health care service plan contract with an employer as defined in Section 2122.6 of the Labor Code providing health coverage to enrollees or subscribers shall meet all of the following requirements:

(a) The employer shall be responsible for the cost of health care coverage except as provided in this section.

(b) An employer may require a potential enrollee to pay up to 20 percent of the cost of the coverage, proof of which is provided by the employer in lieu of paying the fee required by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, unless the wages of the potential enrollee are less than 200 percent of the federal poverty guidelines, as specified annually by the United States Department of Health and Human Services. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages of the individual.

(c) If an employer, as defined in Section 2122.6 of the Labor Code, chooses to purchase more than one means of coverage for potential enrollees and, if applicable, dependents, the employer may require a higher level of contribution from potential enrollees as long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as copayments, coinsurance, or deductibles. In reviewing subscriber or enrollee share-of-premium, deductibles, copayments, and other out-of-pocket costs, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The contract includes prescription drug coverage with out-of-pocket costs for enrollees consistent with subdivision (d).

1357.23. On and after January 1, 2006, all health care service plans contracting with employers consistent with Section 1357.22 or with the State Health Purchasing Program shall make reasonable efforts to

contract with county hospital systems and clinics, including providers or networks of providers that refer enrollees to such hospitals and clinics, as well as community clinics and other safety net providers. This section shall not prohibit a plan from applying appropriate credentialing requirements consistent with this chapter. This section shall not apply to a nonprofit health care service plan that provides hospital services to its enrollees primarily through a nonprofit hospital corporation with which the health care service plan shares an identical board of directors.

SEC. 4. Chapter 8.1 (commencing with Section 10760) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 8.1. INSURANCE MARKET REFORM

10760. If the provisions of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code are held invalid, then the provisions of this chapter shall become inoperative.

10761. (a) Notwithstanding any other provision of law, on and after January 1, 2006, except as specified in subdivision (b), all requirements in Chapter 8 (commencing with Section 10700) applicable to offering, marketing, and selling health benefit plans to small employers as defined in that chapter, including, but not limited to, the obligation to fairly and affirmatively offer, market, and sell all of the insurer's health benefit plans to all employers, guaranteed renewal of all health benefit plans, use of the risk adjustment factor, and the restriction of risk categories to age, geographic region, and family composition as described in that chapter, shall be applicable to all health benefit plans offered to all small and medium employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, except as follows:

(1) For small and medium employers with two to 50 eligible employees, all requirements in that chapter shall apply. As used in this chapter, ''small employer'' shall have the meaning as defined in Section 2122.5 of the Labor Code and ''medium employer'' shall have the meaning as defined in Section 2122.4 of the Labor Code, unless the context otherwise requires.

(2) For medium employers with 51 or more eligible employees, all requirements in that chapter shall apply, except that the health insurers may develop health care coverage benefit plan designs to fairly and affirmatively market only to medium employer groups of 51 to 199 eligible employees, and apply a risk adjustment factor of no more than 115 percent and no less than 85 percent of the standard employee risk rate.

(b) Insurers shall be required to comply with this section only beginning with the date when coverage begins to be offered through the

State Health Purchasing Program pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

10762. On and after January 1, 2006, a health insurer selling a policy to an employer, as defined in Section 2122.6 of the Labor Code, providing health coverage to insureds pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code shall meet all of the following requirements:

(a) The employer shall be responsible for the cost of health care coverage except as provided in this section.

(b) An employer may require a potential enrollee to pay up to 20 percent of the cost of the coverage, proof of which is provided by the employer in lieu of paying the fee required by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, unless the wages of the potential enrollee are less than 200 percent of the federal poverty guidelines, as specified annually by the United States Department of Health and Human Services. For enrollees making a contribution for family coverage and whose wages are less than 200 percent of the federal poverty guidelines for a family of three, the applicable enrollee contribution shall not exceed 5 percent of wages. For enrollees making a contribution for individual coverage and whose wages are less than 200 percent of the federal poverty guidelines for an individual, the applicable enrollee contribution shall not exceed 5 percent of wages of the individual.

(c) If an employer, as defined in Section 2122.6 of the Labor Code, chooses to purchase more than one means of coverage for potential enrollees and, if applicable, dependents, the employer may require a higher level of contribution from potential enrollees as long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as copayments, coinsurance, or deductibles. In reviewing enrollee share-of-premium, deductibles, copayments, and other out-of-pocket costs, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The contract includes prescription drug coverage with out-of-pocket costs for enrollees consistent with subdivision (d).

10763. On and after January 1, 2006, all insurers that sell insurance policies to employers consistent with Section 10762 or to the State Health Purchasing Program shall make reasonable efforts to include as preferred providers county hospital systems and clinics, including providers or networks of providers that refer enrollees to those hospitals and clinics, as well as community clinics and other safety net providers. This section shall not prohibit a plan from applying appropriate credentialing requirements consistent with this chapter. This section shall not apply to a nonprofit health care service plan that provides hospital services to its enrollees primarily through a nonprofit hospital corporation with which the plan shares an identical board of directors.

10764. (a) On and after January 1, 2006, except as provided in subdivision (b), health insurers shall not offer or sell the following insurance policies to employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code:

(1) A Medicare supplement, vision-only, dental-only, or Champus-supplement insurance policy.

(2) A hospital indemnity, accident-only, or specified disease insurance policy that pays benefits on a fixed benefit, cash-payment-only basis.

(b) However, an insurer may sell one or more of the types of policies listed in paragraph (1) or (2) of subdivision (a) if the employer has purchased or purchases concurrently health care coverage meeting the standards of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(c) If an employer, as defined in Section 2022.6 of the Labor Code, chooses to purchase more than one means of coverage, the employer may require a higher level of contribution from potential enrollees so long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as coinsurance or deductibles. In reviewing the share-of-premium, deductibles, copayments, and other out-of-pocket costs paid by insureds, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer, as defined in Section 2122.4 of the Labor Code, may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee

(f) The policy includes prescription drug coverage, which shall be subject to coinsurance, deductibles, and other out-of-pocket costs consistent with (d).

SEC. 5. Section 12693.55 is added to the Insurance Code, to read:

12693.55. (a) Prior to implementation of the Health Insurance Act of 2003, the board shall to the maximum extent permitted by federal law ensure that persons who are either covered or eligible for Healthy Families will retain the same amount, duration, and scope of benefits that they currently receive or are currently eligible to receive, including dental, vision and mental benefits. The board shall consult with a stakeholder group that shall include all of the following:

(1) Consumer advocate groups that represent persons eligible for Healthy Families.

(2) Organizations that represent persons with disabilities.

(3) Representatives of public hospitals, clinics, safety net providers, and other providers.

(4) Labor organizations that represent employees whose families include persons likely to be eligible for Healthy Families.

(5) Employer organizations.

(b) The board shall develop a Healthy Families premium assistance program for eligible individuals as permitted under federal law to reduce state costs and maximize federal financial participation by providing health care coverage to eligible individuals through a combination of available employer-based coverage and a wraparound benefit that covers any gap between the employer-based coverage and the benefits required by this part.

(c) The board shall do all of the following in implementing the premium assistance program:

(1) Require eligible individuals with access to employer-based coverage to enroll themselves or their family or both in the available employer-based coverage if the board finds that enrollment in that coverage is cost-effective.

(2) Promptly reimburse an eligible individual for his or her share of premium cost under the employer-based coverage, minus any contribution that an individual would be required to pay pursuant to Section 12693.43.

(d) If federal approval of a premium assistance program cannot be obtained, the board in consultation with the stakeholder group shall explore alternatives that provide that persons who are either covered or eligible for Healthy Families retain the same amount, duration and scope of benefits that they currently receive or are currently eligible to receive, including vision, dental and mental health benefits.

SEC. 6. Section 131 of the Unemployment Insurance Code is amended to read:

131. ''Contributions'' means the money payments to the Unemployment Fund, Employment Training Fund, State Health Purchasing Fund, or Unemployment Compensation Disability Fund which are required by this division.

SEC. 7. Section 976.7 is added to the Unemployment Insurance Code, to read:

976.7. (a) In addition to other contributions required by this division and consistent with the requirements of Chapter 6 (commencing with Section 2160) of Part 8.7 of Division 2 of the Labor Code, an employer shall pay to the department for deposit into the State Health Purchasing Fund a fee in the amount set by the Managed Risk Medical Insurance Board for the State Health Purchasing Program in accordance with Chapter 4 (commencing with Section 2140) of Part 8.7 of Division 2 of the Labor Code. The fees shall be collected in the same manner and at the same time as any contributions required under Sections 976 and 1088.

(b) In notifying employers of the contributions required under this section, the department shall also provide notice of required employee contribution amounts consistent with Section 2150 of the Labor Code.

(c) An employer shall provide information to all newly hired and existing employees regarding the availability of Medi-Cal coverage for low- and moderate-income employees, including the availability of Medi-Cal premium assistance as well as Medi-Cal coverage for persons receiving coverage through the State Health Purchasing Fund. The Employment Development Department, in consultation with the State Department of Health Services and the Managed Risk Medical Insurance Board shall develop a simple, uniform notice containing that information.

SEC. 8. Section 14105.981 is added to the Welfare and Institutions Code, to read:

14105.981. (a) Prior to the implementation of the Health Insurance Act of 2003, annually for five years after its implementation, and every five years thereafter, the department shall report to the Legislature and the Managed Risk Medical Insurance Board regarding utilization patterns for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 6 at county-owned hospitals and clinics, community clinics, and vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98, including determining the number of Medi-Cal inpatient days and outpatient visits as well as the nature and cost of care provided to Medi-Cal patients.

(b) If Medi-Cal fee-for-service utilization or Medi-Cal fee-for-service payments to county-owned hospitals and clinics,

community clinics, and other vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98 have been reduced, then the department shall review statute, regulations, policies and procedures, payment arrangements or other mechanisms to determine what changes may be necessary to protect Medi-Cal funding and maximize federal financial participation to protect the financial stability of county-owned hospitals and clinics, community clinics, and other vital institutional safety net providers. The department shall consult with representatives of county-owned hospital systems, community clinics, vital institutional safety net providers eligible for Medi-Cal payments under Section 14105.98, legal services advocates, and recognized collective bargaining agents for the specified providers.

SEC. 9. Section 14124.91 of the Welfare and Institutions Code is amended to read:

14124.91. (a) The State Department of Health Services shall, whenever it is cost-effective, pay the premium for third-party health coverage for beneficiaries under this chapter. The State Department of Health Services shall, when a beneficiary's third-party health coverage would lapse due to loss of employment or change in health status, lack of sufficient income or financial resources, or any other reason, continue the health coverage by paying the costs of continuation of group coverage pursuant to federal law or converting from a group to an individual plan, whenever it is cost-effective. Notwithstanding any other provision of a contract or of law, the time period for the department to exercise either of these options shall be 60 days from the date of lapse of the policy.

(b) In addition, contingent on federal financial participation, the department shall implement a Medi-Cal premium assistance program to reduce state costs and maximize allowable federal financial participation by paying the premium for employer-based health care coverage available to persons who are eligible for Medi-Cal, and in combination with employer-based health care coverage providing a wraparound benefit that covers any gap between the employer-based health care coverage and the benefits provided by the Medi-Cal program.

(c) The department in implementing the premium assistance program shall promptly reimburse an applicant for Medi-Cal for his or her share of premium, minus any share of cost required pursuant to this part. Once enrolled in both the premium assistance program and employer-based health care coverage repayment to Medi-Cal covered enrollees of any share of premium shall coincide with the payment by the enrollee of the premium for the available employer-based health care coverage. Where the applicant or beneficiary avails himself or herself of the wraparound benefit, Medi-Cal shall pay for any copayments, deductibles, and other

allowable out-of-pocket medical costs under the employer-based coverage.

(d) The department shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

SEC. 10. Section 14124.915 is added to the Welfare and Institutions Code, to read:

14124.915. (a) Six months prior to implementation of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, the department shall notify Medi-Cal enrollees of the implementation of the Health Insurance Act of 2003, the categories of enrollees covered, the requirements of the program, the availability of Medi-Cal coverage for those persons, including the availability of a premium assistance program for those persons eligible for Medi-Cal who are also covered by employer-based coverage.

(b) Three months prior to the implementation of each phase of the program created by the Health Insurance Act of 2003, those persons enrolled in Medi-Cal shall be offered the opportunity to enroll in a Medi-Cal premium assistance program.

SEC. 11. Section 14124.916 is added to the Welfare and Institutions Code, to read:

14124.916. (a) Prior to the implementation of the Health Insurance Act of 2003, the department shall convene a stakeholder group that includes, but is not limited to, the following members:

(1) The Managed Risk Medical Insurance Board.

(2) Representatives of county welfare departments.

(3) Consumer advocacy groups that represent persons enrolled in or eligible to be enrolled in the Medi-Cal program.

(4) Organizations that represent persons with disabilities.

(5) Labor organizations that represent employees and their dependents who are likely to be eligible for enrollment in Medi-Cal.

(6) Representatives of public hospitals, clinics, provider groups, and safety net providers.

(b) The department in consultation with the stakeholder group shall develop a plan to accomplish the following objectives:

(1) Provide that enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal retain the same amount, duration, and scope of benefits to which those beneficiaries currently are entitled.

(2) Provide that enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal do not incur greater cost-sharing, including premiums, deductibles, and copays, than currently allowed under federal Medicaid law.

(3) Maximize continuity of care for enrollees and, if applicable, dependents who receive coverage consistent with the Health Insurance Act of 2003 and who are enrolled in Medi-Cal.

(4) Streamline and simplify eligibility and enrollment requirements for Medi-Cal beneficiaries who also have other coverage.

(c) The department shall report to the Legislature every six months and shall submit its final plan to the Legislature three months prior to initial implementation of the Health Insurance Act of 2003.

(d) The department shall seek all state plan amendments and federal approvals as necessary to maximize the amount of any federal financial participation available.

SEC. 12. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memorandums that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or

local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or

weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or

exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions,

communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions,

opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by a local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 13. (a) 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, except as provided in subdivision (b) or (c).

(b) In the event that the provisions of Section 2160.1 of the Labor Code are held invalid and this action is affirmed on final appeal, an employer may qualify for a full credit for those amounts spent for providing or reimbursing health care benefits, allowable by state law as a deductible business expense if the amount spent equals or exceeds the lower of the cost for Healthy Families or 150 percent of the cost for Medi-Cal 1931(b) coverage. In no instance shall the amount of the credit exceed the amount of the fee that would otherwise have been paid. The Employment Development Department shall specify the manner and means of submitting proof to obtain the credit.

(c) In the event that Chapter 8.7 (commencing with Sec. 2120) of Division 2 of the Labor Code is held invalid, Article 3.11 (commencing with Section 1357.20) of Chapter 2.2 of Division 2 of the Health and Safety Code and Chapter 8.1 (commencing with Section 11760) of Part 2 of Division 2 of the Insurance Code shall become inoperative.

SEC. 14. This act shall not become operative unless AB 1528 of the 2003–04 Regular Session is also enacted and becomes operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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CHAPTER 674

An act to amend Section 7501 of the Family Code, relating to child custody.

[Approved by Governor October 5, 2003. Filed with Secretary of State October 6, 2003.]

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

SECTION 1. Section 7501 of the Family Code is amended to read:

7501. (a) A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.

(b) It is the intent of the Legislature to affirm the decision in In re Marriage of Burgess (1996) 13 Cal.4th 25, and to declare that ruling to be the public policy and law of this state.

CHAPTER 675

An act to amend Section 7270.5 of, and to add Sections 7275 and 7276 to, the Food and Agricultural Code, and to add Division 2.7 (commencing with Section 1970) to the Streets and Highways Code, relating to riparian habitat.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

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

(a) Noxious and invasive weeds have destroyed large portions of riparian habitat along creeks, streams, rivers, lakes, reservoirs, and other bodies of freshwater in California.

(b) Noxious and invasive weeds damage the integrity of the riparian system by altering erosion, sedimentation, flooding, and fire.

(c) The invasive weed Arundo donax (giant reed) has established large colonies across the state, most notably in southern California, where in one 10,000 acre area of riparian habitat it has been estimated to consume more than 30,000 acre-feet of water each year, or enough water to meet the yearly freshwater needs of 150,000 persons.

(d) Proper noxious and invasive weed management in riparian habitats is critical to sustaining California's freshwater supply in the future.

(e) The Legislature intends that the Department of Food and Agriculture operate an Adopt-A-Riverway Program consistent with the integrated weed management plans for the control of noxious weeds implemented pursuant to Article 1.7 (commencing with Section 7270) of Chapter 1 of Part 4 of Division 4 of the Food and Agricultural Code.

(f) The Legislature intends that any private gifts, donations, or bequests to the Adopt-A-Riverway Fund are charitable contributions pursuant to Section 170 of the Internal Revenue Code.

(g) The Legislature intends that a portion of the donations made to the Adopt-A-Riverway Program be used to pay for courtesy signs in recognition of the donors' efforts to restore California's riverways and riparian habitats.

(h) The Legislature intends the act adding this section to encourage local governments to organize litter removal events in which persons may volunteer time to pick up litter along waterways and in riparian habitats within the local government's jurisdiction.

(i) The Legislature intends that the act adding this section shall not be construed to permit the encroachment onto private property or the infringement upon the private property rights of any person in this state.

SEC. 2. Section 7270.5 of the Food and Agricultural Code is amended to read:

7270.5. For the purposes of this article:

(a) ''Integrated weed management plan'' means an ecosystem-based control strategy that focuses on long-term prevention of weeds through a combination of techniques, such as biological controls, judicious use of herbicides, modified land management, and cultural practices, and where control practices are selected and applied in a manner that minimizes the risks to human health, nontargeted organisms, and the environment. An integrated weed management plan shall also, when appropriate, comply with any applicable provisions of Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, Division 6 (commencing with Section 11401) and Division 7 (commencing with Section 12500) of the Food and Agricultural Code, and the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(b) ''Noxious and invasive weeds'' means weeds that the department has determined to be either noxious or invasive weed species.

(c) ''Person'' shall have the same meaning as in Section 38, but shall additionally include the United States of America, and all political subdivisions, districts, municipalities, and public agencies of the State of California.

(d) ''Riverway'' means the water, bed, shoreline,and riparian vegetation, of any creek, including an ''urban creek'' as defined in Section 7048 of the Water Code, stream, river, lake, reservoir, or other

body of freshwater, including a ''stream environment zone'' as defined in Section 66957 of the Government Code, as well as enclosed bays and estuaries, as defined by Section 13391.5 of the Water Code.

SEC. 3. Section 7275 is added to the Food and Agricultural Code, to read:

7275. (a) The department is authorized to operate a government-volunteer partnership Adopt-A-Riverway Program.

(b) The department may receive funds or services from any person to assist a weed management area in implementing an integrated weed management plan, pursuant to this article.

(c) Adopt-A-Riverway Program activities may include the following activities, provided the activities are completed as part of an approved integrated weed management plan and are coordinated with the responsible local agency:

(1) Planting and establishing native seedling trees, native grasses, and wildflowers along the adopted riverway.

(2) Removal of litter and noxious and invasive plant species.

(d) Adopt-A-Riverway Program activities shall be conducted only on publicly owned land unless permission is granted by the owner or owners of private property for program activities to take place on their property as well.

(e) Activities undertaken pursuant to subdivision (c) are subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and any state or locally adopted river management or conservancy plan.

(f) The secretary may request a local authority to authorize a courtesy sign to be placed on a county highway or city street, near the riverway, pursuant to Chapter 2 (commencing with Section 1975) of Division 2.7 of the Streets and Highways Code.

(g) It is the intent of the Legislature that the duties and responsibilities of the department, as provided for in this section, be accomplished by utilizing existing staff resources, as available.

SEC. 4. Section 7276 is added to the Food and Agricultural Code, to read:

7276. (a) The Adopt-A-Riverway Fund is hereby established in the State Treasury. The fund is a trust fund and shall contain money and any other proceeds donated, appropriated, transferred, or otherwise received for purposes pertaining to the Adopt-A-Riverway Program. The secretary may collect for deposit into the fund, gifts, donations, bequests, and moneys made available from federal, state, and local sources.

(b) Notwithstanding subdivision (c) of Section 7271, the secretary of the department shall award grants from the Adopt-A-Riverway Fund to weed management areas, as defined by subdivision (b) of Section 7272,

for the purpose of integrated weed management along riverways and in riparian habitats consistent with Sections 7272 and 7272.5.

(c) Notwithstanding subdivision (c) of Section 7271, the secretary of the department may award grants from the Adopt-A-Riverway Fund to nonprofit organizations for integrated weed management along riverways and in riparian habitats. The department shall establish regulations for grant eligibility and award pursuant to this subdivision.

(d) Fifteen percent of the total moneys in the Adopt-A-Riverway Fund shall be made available to the department, to be used only for the following purposes:

(1) Carrying out the provisions of this article.

(2) Developing of noxious weed control strategies.

(3) Seeking new, effective biological control agents for the long-term control of noxious weeds.

(4) Conducting private and public workshops as needed to discuss and plan weed management strategies with all interested and affected local, state, and federal agencies, private landowners, educational institutions, interest groups, and county agricultural commissioners.

(e) Upon receipt of donations to the fund totaling a minimum of one hundred thousand dollars ($100,000), up to 5 percent of any individual donation of five thousand dollars ($5,000) or more may be used for courtesy signs to be produced, placed, and maintained pursuant to Chapter 2 (commencing with Section 1975) of Division 2.7 of the Streets and Highways Code.

(f) All startup costs incurred by the state in establishing the Adopt-A-Riverway Program shall be reimbursed to the General Fund from the Adopt-A-Riverway Fund before any money or other proceeds in the fund may be expended for program purposes or transferred by grant award.

SEC. 5. Division 2.7 (commencing with Section 1970) is added to the Streets and Highways Code, to read:

DIVISION 2.7. COURTESY SIGNS

1970. (a) Local authorities, with respect to highways under their respective jurisdictions, may place and maintain, or cause to be placed and maintained, courtesy signs to recognize the sponsors of the Adopt-A-Riverway Program.

(b) Courtesy signs shall be consistent with existing code provisions and department rules and regulations concerning signs.

(c) Courtesy signs shall only be placed upon the highways of a local authority, upon the approval of an authorizing resolution by a majority of the members of the governing body of that local authority. The

resolution authorizing the placement of courtesy signs shall include all of the following:

(1) A general plan of where the courtesy signs will be placed within the geographical borders of the local authority, including any street, bike trail, or pedestrian path.

(2) A finding that the planned placement of the courtesy signs would not degrade the natural environment of the area.

(d) Courtesy signs shall contain the title ''Adopt-A-Riverway'' at the top of the sign and the name or logo of the sponsoring person or entity below the ''Adopt-A-Riverway'' title. Logos shall be provided at the sponsors' own cost. Both the title and the logo shall be in large enough fonts that are easily read.

1975. (a) Courtesy signs may be awarded by the Department of Food and Agriculture, to persons that donate a minimum of five thousand dollars ($5,000) annually to the Adopt-A-Riverway Fund. Donors may stipulate in which county they desire the courtesy signs be placed and may request specific sign placement within the county.

(b) The Department of Food and Agriculture may enter into an agreement with a local authority for production, placement, and maintenance of courtesy signs to be awarded pursuant to this section.

(c) The costs incurred by the local authorities associated with placing and maintaining courtesy signs shall be paid for out of the Adopt-A-Riverway Fund.

CHAPTER 676

An act to add and repeal Section 41514.1 of the Health and Safety Code, relating to air resources.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 41514.1 is added to the Health and Safety Code, to read:

(a) A health facility shall use the most recent standard set by the Joint Commission on the Accreditation of Healthcare Organizations for testing diesel backup generators. During each week that a diesel backup generator is not tested, the generator shall be started at least once, with or without load, for a period of time that allows the coolant temperature to stabilize.

(b) A health facility shall submit all data collected under this section to the State Department of Health Services when requested by the department.

(c) This section 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.

(d) For the purposes of this section, ''health facility'' has the same meaning as Section 1250, but includes only those facilities described in subdivisions (a), (b), (c), (d), (f), (g), or (k) of that section.

(e) Nothing in this section affects the authority of the State Air Resources Board or an air quality management district or air pollution control district to regulate diesel backup generators owned by a health facility.

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

CHAPTER 677

An act to add Section 5003.18 to the Public Resources Code, relating to state property.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

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

(a) As part of a high priority to increase park and open-space opportunities in urban areas, the Department of Parks and Recreation purchased a 40-acre parcel in the City of Los Angeles known as Taylor Yard.

(b) Statewide and community needs related to Taylor Yard will best be served by a coordinated and cooperative relationship between the Department of Parks and Recreation and the City of Los Angeles Department of Recreation and Parks. The goal of this cooperative relationship should be to utilize and maximize the strengths and missions of each entity in order to provide quality outdoor recreational

and natural resources enhancement opportunities at the site, including organized sports fields to be operated by the city. This cooperative relationship should include a collaborative planning and design process. Collaborative planning and design are necessary to ensure that the parcel within Taylor Yard to be leased to the City of Los Angeles for local park purposes with regional benefits, and the parcel within Taylor Yard to be retained by the Department of Parks and Recreation for state park purposes, are developed in a compatible manner that meets the needs of the public.

(c) A lease of this land by the Department of Parks and Recreation to the City of Los Angeles is needed to facilitate the provision of organized sports opportunities. Specifically, the Department of Parks and Recreation should lease a portion of Taylor Yard to the City of Los Angeles, not to exceed 20 acres and which is appropriate for city-developed and managed local and regional recreational needs, including organized, youth sports activities.

(d) To meet the needs of the public, dedication of necessary resources and timely development of the Taylor Yard parcel is critical. In light of this need, the lease agreement shall specify that, if the property leased by the Department of Parks and Recreation to the City of Los Angeles is not improved to provide local park opportunities with regional benefits within five years, the state may terminate the lease.

(e) To ensure the timely development of regional parks and organized sports opportunities on the parcel to be leased to the City of Los Angeles, the city shall utilize portions of funding available to the city for park purposes, including state and local funds.

SEC. 2. Section 5003.18 is added to the Public Resources Code, to read:

5003.18. (a) The director may lease to the City of Los Angeles a parcel, not to exceed 20 acres of unimproved real property situated in the City of Los Angeles, that parcel being a portion of the property owned by the department and commonly known as Taylor Yard.

(b) Notwithstanding subdivisions (b) and (c) of Section 5003.17, the term of the lease shall be for a period not to exceed 25 years and shall be without monetary consideration for use of the property, except that the city shall fund the development and operation of the park. The terms of the lease shall specify the nature of the city's control of, and responsibility for the operation of, the parcel.

(c) The purpose of the lease shall be for the development and operation by the city of a local park with regional benefits containing and providing organized sports facilities that will primarily serve the youth of the Los Angeles region.

(d) If the department determines that the city has failed to develop a local park with regional benefits containing and providing organized

sports facilities within five years of execution of the lease, the state shall have the right to terminate the lease.

(e) Notwithstanding subdivision (d) of Section 5003.17, the Public Works Board shall review and approve the lease, and shall report any action taken to the Legislature and the Governor.

(f) Upon one year's written notice from the city and upon the state's written consent as granted pursuant to the state's sole discretion, the lease may be extended for an additional 25 years commencing on the first calendar day after the date set for expiration of the lease. In exercising its discretion to extend the term of the lease, the state may modify, add, or delete terms and conditions of the lease, including a requirement for monetary consideration for use of the property, as the state may determine to be in the best interest of the state. Pursuant to subdivision (d) of Section 5003.17, the Legislature shall review and approve any extension of the lease.

(g) The lease, and any extension of the lease, pursuant to this section shall require the city to comply with applicable stormwater waste discharge requirements issued by the Los Angeles Regional Water Quality Control Board and the State Water Resources Control Board.

(h) The City of Los Angeles may not use the lease as its match when applying for grant funds under the Roberti-Z'Berg-Harris Urban Open-Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620)), or any other state grant funds, to develop Taylor Yard.

CHAPTER 678

An act to add Section 5110 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. It is the intent of the Legislature in enacting this act that a contractor subject to its provisions may be paid the reasonable cost, specifically excluding profit, of labor, equipment, materials, and services that were rendered under a contract that was competitively bid, but subsequently determined to be invalid, in order to avoid unjust enrichment of the public entity and an unlawful taking of the contractor's property.

SEC. 2. Section 5110 is added to the Public Contract Code, to read:

5110. (a) When a project for the construction, alteration, repair, or improvement of any structure, building, or road, or other improvement of any kind is competitively bid and any intended or actual award of the contract is challenged, the contract may be entered into pending final decision of the challenge, subject to the requirements of this section. If the contract is later determined to be invalid due to a defect or defects in the competitive bidding process caused solely by the public entity, the contractor who entered into the contract with the public entity shall be entitled to be paid the reasonable cost, specifically excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination that the contract is invalid if all of the following conditions are met:

(1) The contractor proceeded with construction, alteration, repair, or improvement based upon a good faith belief that the contract was valid.

(2) The public entity has reasonably determined that the work performed is satisfactory.

(3) Contractor fraud did not occur in the obtaining or performance of the contract.

(4) The contract does not otherwise violate statutory or constitutional limitations.

(b) In no event shall payment to the contractor pursuant to this section exceed either of the following:

(1) The contractor's costs as included in its bid plus the cost of any approved change orders.

(2) The amount of the contract less profit at the point in time the contract is determined to be invalid.

(c) Notwithstanding subdivision (a), this section shall not affect any protest and legal proceedings, whether contractual, administrative, or judicial, to challenge the award of the public works contract and enforce competitive bidding laws, nor affect any rights under Section 337.1 or 337.15 of the Code of Civil Procedure.

CHAPTER 679

An act to add Article 10.3 (commencing with Section 25214.11) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Article 10.3 (commencing with Section 25214.11) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.3. Toxics in Packaging Prevention Act

25214.11. (a) The Legislature finds and declares all of the following:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

(2) Packaging comprises a significant percentage of the overall solid waste stream.

(3) The presence of heavy metals in packaging is a part of the total concern regarding the disposal of hazardous constituents in the solid waste stream, in light of the presence of heavy metals in emissions or ash when packaging is incinerated, or in leachate when packaging is disposed of in a solid waste landfill.

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

(5) It is desirable, as a first step in reducing the toxicity of packaging waste, and reducing the hazardous materials that may be disposed of in solid waste landfills, to eliminate the addition of these heavy metals to packaging.

(6) The intent of this article is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(b) This article shall be known, and may be cited, as the ''Toxics in Packaging Prevention Act.''

25214.12. For purposes of this article, the following terms have the following meanings:

(a) ''Distribution'' means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(b) (1) ''Importer or agent'' means a person who does either of the following:

(A) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer in another country to a purchaser in this state, and who may receive a commission or fee based on that sale.

(B) Is the importer of record listed on the United States Customs Service forms for imported packaging or packaging components.

(2) An importer or agent does not include a person who takes title to a package or packaging component.

(c) (1) ''Intentional introduction'' means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) ''Intentional introduction'' does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(d) ''Incidental presence'' means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(e) ''Manufacturer'' means any person, firm, association, partnership, or corporation producing a package or packaging component.

(f) ''Manufacturing'' means the physical or chemical modification of a material to produce packaging or a packaging component.

(g) ''Package'' means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product, including a unity package, an intermediate package or a shipping container, as defined in the American Society of Testing and Materials (ASTM) specification D 996. ''Package'' also includes unsealed receptacles, such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(h) ''Packaging component'' means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the American Society for Testing and Materials (ASTM) specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the American

Society for Testing and Materials (ASTM) qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(i) ''Purchaser'' means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(j) ''Recycled material'' means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(k) ''Regulated metal'' means lead, mercury, cadmium, or hexavalent chromium.

(*l*) (1) ''Supplier'' means a person who does one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(2) ''Supplier'' does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(m) ''Toxics in Packaging Clearinghouse'' means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer, importer, agent, or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component may not exceed 100 parts per million by weight.

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance with this article, if the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law, and the manufacturer or supplier maintains documentation that fully and clearly demonstrates that the package or packaging component is eligible for this exemption.

(c) (1) The package or packaging component exceeds the maximum concentration level set forth in subdivision (c) of Section 25214.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal, for which there is no feasible alternative that may be used in the package or packaging component, has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, and the manufacturer or supplier maintains documentation that fully and clearly demonstrates that the package or packaging component is eligible for this exemption.

(2) For purposes of this subdivision, ''no feasible alternative that may be used'' means that the use of the regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials. This does not include the use of a regulated metal for marketing purposes.

(e) (1) A package or packaging component that is reused but exceeds the summed incidental concentration level of regulated metal set forth in subdivision (c) of Section 25214.13, if all of the following apply:

(A) The product being conveyed by the package or packaging component is otherwise regulated under a federal or state health or safety requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) A manufacturer or distributor of a package or packaging component has obtained an exemption, pursuant to the process described in paragraph (2), for use of a regulated metal that exceeds the summed

incidental concentration level set forth in subdivision (c) of Section 25214.13 in a package or packaging component that has a controlled distribution and reuse.

(2) The department shall grant an exemption under paragraph (1) from Section 25214.13 for two years only if both of the following conditions are met:

(A) The manufacturer or distributor of the package or packaging component submits supporting information that complies with the requirements set forth in paragraph (3) with the request for an initial and a renewed exemption.

(B) The supporting information demonstrates that the package or packaging component is eligible for the exemption.

(3) The supporting information that a manufacturer or distributor shall submit to the department, before the department may grant an exemption pursuant to this subdivision, shall include all of the following:

(A) Information that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the maximum summed incidental concentration level of regulated metal set forth in subdivision (c) of Section 25214.13.

(B) A means of identifying, in a permanent and visible manner, any reusable package or packaging component, containing a regulated metal for which the exemption is sought.

(C) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components, manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or designee.

(D) A system of inventory and record maintenance to account for reusable packages or packaging components, placed in, and removed from, service.

(E) A means of transforming returned packages or packaging components, that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as a waste in accordance with federal and state laws.

(F) A system of annually reporting to the department any changes to the system and changes in designees.

(4) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) A glass or ceramic package or packaging component that has a vitrified label when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section

66261.1) of Division 4.5 of Title 22 of the California Code of Regulations, and does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

25214.15. (a) A manufacturer or distributor that requests an exemption pursuant to subdivision (b), (d), or (f) of Section 25214.14 shall enter into a written agreement with the department pursuant to which that manufacturer or distributor shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for costs incurred by the department in processing or responding to the request.

(b) The department shall deposit all reimbursements received pursuant to this section in the Hazardous Waste Control Account for appropriation in accordance with Section 25174.

25214.16. (a) On and after January 1, 2006, each manufacturer, importer, agent, or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer, importer, agent, or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer, importer, agent, or supplier of the package or packaging component. A manufacturer, importer, agent, or supplier shall furnish a certificate of compliance, or a copy thereof, to the department, upon its request.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) If a manufacturer, importer, agent, or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer, importer, agent, or supplier shall provide the purchaser with an amended or new certificate of compliance for the reformulated or new package or packaging component.

(d) The department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component.

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (k) of Section 25214.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

25214.19. This article does not affect any duty or other requirement imposed under any other federal or state law.

25214.20. (a) The provisions of this article are severable, and if a court holds that a phrase, clause, sentence, or provision of this article is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the article and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this article shall be liberally construed to give effect to the purposes of this article.

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 680

An act to add Section 111 to the Water Code, relating to water.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

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

(a) Water metering and volumetric pricing are among the most efficient water conservation tools. Water metering provides information on how much water is being used and facilitates the imposition of a water rate structure that encourages water conservation.

(b) Without water meters, it is impossible for homeowners and businesses to know how much water they are using, thereby inhibiting conservation, punishing those who conserve, and rewarding those who waste water.

(c) Existing law requires the installation of a water meter as a condition of water service provided pursuant to a connection installed on or after January 1, 1992, but the continuing widespread absence of water meters and the lack of volumetric pricing could result in the inefficient use of water for municipal and industrial uses.

(d) Municipal and industrial water contractors that receive water from the federal Central Valley Project are required to install water meters as a condition of water service, and in the absence of that installation, those contractors risk losing their water supplies. The loss of these water supplies would have devastating effects on the customers of those contractors, as well as the entire state. Other water supply sources would have to be found to replace that foregone water supply.

(e) At a time when the state is struggling in its efforts to cut back on the use of Colorado River water in accordance with federal requirements, Californians cannot afford to be deprived of tens of thousands of acre-feet of water because some municipalities decline to do what most municipalities have been doing for decades, which is to install and use water meters.

(f) This act addresses a subject matter of statewide concern, and it is the intent of the Legislature to supersede and preempt any enactment of a county or city, including a charter county or charter city, or other local public agency, to which this act applies.

SEC. 2. Section 111 is added to the Water Code, to read:

111. (a) Notwithstanding any other provision of law, any urban water supplier that, on or after January 1, 2004, receives water from the federal Central Valley Project under a water service contract or subcontract executed pursuant to Section 485h(c) of Title 43 of the United States Code with the Bureau of Reclamation of the United States Department of the Interior shall do both of the following:

(1) On or before January 1, 2013, install water meters on all service connections to residential and nonagricultural commercial buildings constructed prior to January 1, 1992, located within its service area.

(2) On and after March 1, 2013, or according to the terms of the Central Valley Project water contract in operation, charge customers for water based on the actual volume of deliveries, as measured by a water meter.

(b) An urban water supplier that receives water from the federal Central Valley Project under a water service contract or subcontract consistent with subdivision (a) may recover the cost of providing services related to the purchase, installation, and operation and maintenance of water meters from rates, fees, or charges.

(c) This section, which ensures the ability of certain urban water suppliers to meet the water supply needs of their customers, addresses a subject matter of statewide concern and applies to all counties and

cities, including charter counties and charter cities, and local public agencies that are urban water suppliers that are described in subdivision (a).

(d) For the purposes of this section, ''urban water supplier'' shall have the same meaning as set forth in Section 10617 and ''water meter'' shall have the same meaning as set forth in Section 110.

CHAPTER 681

An act to amend Section 6930 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6930 of the Fish and Game Code is amended to read:

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, involving the delivery of water by means other than a pipeline, natural watercourse, well, 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.

(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, natural watercourse, well, 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 682

An act to add Article 2.75 (commencing with Section 127940) to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, relating to statewide health planning and development.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Article 2.75 (commencing with Section 127940) is added to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 2.75. National Health Service Corps State Loan Repayment Program

127940. In administering the National Health Service Corps State Loan Repayment Program in accordance with Section 254q-1 of Title 42 of the United States Code and related federal regulations, the office shall strive, whenever feasible, to equitably distribute loan repayment awards between eligible urban and rural program sites, after taking into account the availability of health care services in the communities to be served and the number of individuals to be served in each program site. The office shall set a reasonable deadline for when all applications are required to be received. All eligible applications shall be given consideration before any award is granted.

CHAPTER 683

An act to amend Sections 13264, 13268, 13321, 13350, 13372, 13383, 13385, and 13387 of the Water Code, relating to water.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

SECTION 1. Section 13264 of the Water Code is amended to read:

13264. (a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The issuance of a waiver pursuant to Section 13269.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting any person who is violating or threatening to violate this section from doing any of the following, whichever is applicable:

(1) Discharging the waste or fluid.

(2) Making any material change in the discharge.

(3) Constructing the injection well.

(c) (1) Notwithstanding any other provision of law, moneys collected under this division for a violation pursuant to paragraph (2) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

SEC. 2. Section 13268 of the Water Code is amended to read:

13268. (a) (1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).

(2) Any person who knowingly commits any violation described in paragraph (1) is subject to criminal penalties pursuant to subdivision (e).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6

(commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(e) (1) Subject to paragraph (2), any person who knowingly commits any of the violations set forth in subdivision (a) or (c) shall be punished by a fine that does not exceed twenty-five thousand dollars ($25,000).

(2) Any person who knowingly commits any of the violations set forth in subdivision (a) or (c) after a prior conviction for a violation set forth in subdivision (a) or (c) shall be punished by a fine that does not exceed twenty-five thousand dollars ($25,000) for each day of the violation.

(f) (1) Notwithstanding any other provision of law, fines collected pursuant to subdivision (e) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste, or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

SEC. 3. Section 13321 of the Water Code is amended to read:

13321. (a) In the case of a review by the state board under Section 13320, the state board, upon notice and hearing, if a hearing is requested, may stay in whole or in part the effect of the decision and order of a regional board or of the state board.

(b) If a petition is filed with the superior court to review a decision of the state board, any stay in effect at the time of the filing the petition shall remain in effect by operation of law for a period of 20 days from the date of the filing of that petition.

(c) If the superior court grants a stay pursuant to a petition for review of a decision of the state board denying a request for a stay with respect to waste discharge requirements, the stay may be made effective as of the effective date of the waste discharge requirements.

SEC. 4. Section 13350 of the Water Code is amended to read:

13350. (a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be

liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term ''discharge'' includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term ''discharge'' does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed fifteen thousand dollars ($15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed twenty dollars ($20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars ($5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars ($500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars ($10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining that amount, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for that liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other provision of law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

SEC. 5. Section 13372 of the Water Code is amended to read:

13372. (a) This chapter shall be construed to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions apply to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

(b) The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material.

SEC. 6. Section 13383 of the Water Code is amended to read:

13383. (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

(c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

SEC. 7. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(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, 401, 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 effluent 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) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the

waste on waters of the state or for the purposes authorized in Section 13443.

(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. 8. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which pollutant or hazardous substance causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of

not less than five thousand dollars ($5,000), nor more than twenty-five thousand dollars ($25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in the county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which the violation occurs, or by imprisonment of not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than fifty thousand dollars ($50,000), for each day in which the violation occurs, or by imprisonment in the state prison for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars ($100,000) for each day in which the violation occurs, or by imprisonment in the state prison of not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the state prison of not more than 15 years, or both. A person which is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars ($1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars ($500,000) or imprisonment in the state prison of not more than 30 years, or both. A person which is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars ($2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board,

or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars ($25,000), or by imprisonment in the state prison for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars ($25,000) per day of violation, or by imprisonment in the state prison of not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, ''organization,'' ''serious bodily injury,'' ''person,'' and ''hazardous substance'' shall have the same meaning as in Section 309(c) of the Clean Water Act, as amended.

(h) (1) Subject to paragraph (2) funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 684

An act to add Section 49414.5 to the Education Code, relating to pupil health.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 49414.5 is added to the Education Code, to read:

49414.5. (a) In the absence of a credentialed school nurse or other licensed nurse onsite at the school, each school district may provide school personnel with voluntary emergency medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia, and volunteer personnel shall provide this emergency care, in accordance with standards established pursuant to subdivision (b) and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision (b) may not be required to provide emergency medical assistance pursuant to this subdivision.

(b) (1) The Legislature encourages the American Diabetes Association to develop performance standards for the training and supervision of school personnel in providing emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia. The performance standards shall be developed in cooperation with the Department of Education, the California School Nurses Organization, the California Medical Association, and the American Academy of Pediatrics. Upon the development of the performance standards pursuant to this paragraph, the State Department of Health Services' Diabetes Prevention and Control Program shall approve the performance standards for distribution and make those standards available upon request.

(2) Training established pursuant to this subdivision shall include all of the following:

(A) Recognition and treatment of hypoglycemia.

(B) Administration of glucagon.

(C) Basic emergency followup procedures, including, but not limited to, calling the emergency 911 phone number and contacting, if possible, the pupil's parent or guardian and licensed health care provider.

(3) Training by a physician, credentialed school nurse, registered nurse, or certificated public health nurse according to the standards

established pursuant to this section shall be deemed adequate training for the purposes of this section.

(4) (A) A school employee shall notify the credentialed school nurse assigned to the school district if he or she administers glucagon pursuant to this section.

(B) If a credentialed school nurse is not assigned to the school district, the school employee shall notify the superintendent of the school district, or his or her designee if he or she administers glucagon pursuant to this section.

(5) All materials necessary to administer the glucagon shall be provided by the parent or guardian of the pupil.

(c) In the case of a pupil who is able to self-test and monitor his or her blood glucose level, upon written request of the parent or guardian, and with authorization of the licensed health care provider of the pupil, a pupil with diabetes shall be permitted to test his or her blood glucose level and to otherwise provide diabetes self-care in the classroom, in any area of the school or school grounds, during any school-related activity, and, upon specific request by a parent or guardian, in a private location.

(d) For the purposes of this section, the following terms have the following meanings:

(1) ''School personnel'' means any one or more employees of a school district who volunteer to be trained to administer emergency medical assistance to a pupil with diabetes.

(2) ''Emergency medical assistance'' means the administration of glucagon to a pupil who is suffering from severe hypoglycemia.

SEC. 2. It is the intent of the Legislature that Section 1799.102 of the Health and Safety Code shall apply to activities authorized by this act.

CHAPTER 685

An act to amend Section 6032 of the Food and Agricultural Code, relating to pests.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6032 of the Food and Agricultural Code is amended to read:

6032. As used in this article ''handler'' means any person that engages in the operation of selling, marketing, or processing any of the

crops vulnerable to damage from curly top virus, as covered by this chapter, which he or she has purchased, or acquired from a producer or which he or she is marketing, selling or processing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. A producer-handler is a producer who operates as a handler as to any such crop produced by him or her. Every producer or producer-handler of agricultural crops susceptible to curly top virus as determined by the secretary, may include, but is not limited to, tomatoes, sugar beets, melons, beans, cucumbers, spinach, and peppers shall pay to the department an assessment on all those crops sold or delivered by him or her to a handler or, in the case of a producer-handler, on those crops marketed by the producer-handler. The full amount of the assessment shall be collected from the producer by the handler at the point and time that the crop is purchased or received by the handler as provided by regulations of the secretary.

CHAPTER 686

An act to amend, repeal, and add Section 40420 of the Health and Safety Code, relating to air quality.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 40420 of the Health and Safety Code is amended to read:

40420. (a) The south coast district shall be governed by a district board consisting of 12 members appointed as follows:

(1) One member appointed by the Governor, with the advice and consent of the Senate.

(2) One member appointed by the Senate Committee on Rules.

(3) One member appointed by the Speaker of the Assembly.

(4) Four members appointed by the boards of supervisors of the counties in the south coast district. Each board of supervisors shall appoint one of these members, who shall be one of the following:

(A) A member of the board of supervisors of the county making the appointment.

(B) A mayor or member of a city council from a city in the portion of the county making the appointment that is included in the south coast district.

(5) Three members appointed by cities in the south coast district. The city selection committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of these members, who shall be either a mayor or a member of the city council of a city in the portion of the county included in the south coast district.

(6) A member appointed by the cities of the western region of Los Angeles County, consisting of the Cities of Agoura Hills, Avalon, Beverly Hills, Carson, Compton, Culver City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Hidden Hills, Inglewood, Lawndale, Lomita, Los Angeles, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Santa Monica, Torrance, West Hollywood, and Westlake Village. These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the western region.

(7) A member appointed by the cities of the eastern region of Los Angeles County, consisting of the cities in Los Angeles County that are not listed in paragraph (6). These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the South Coast Air Basin.

(c) The member appointed by the Governor shall be either a physician who has training and experience in the health effects of air pollution, an environmental engineer, a chemist, a meteorologist, or a specialist in air pollution control.

(d) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the south coast district board, to discharge all duties and responsibilities of a member of the south coast district board on a regular basis, and to participate actively in the affairs of the south coast district. No member may designate an alternate for any purpose or otherwise be represented by another in his or her capacity as a member of the south coast district board.

(e) Each appointment by a board of supervisors shall be considered and acted on at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall provide an opportunity for testimony on the qualifications of the candidates for appointment.

(f) The appointments by cities in the south coast district shall be considered and acted on at a duly noticed meeting of the city selection committee, which shall meet in a government building and provide an opportunity for testimony on the qualifications of the candidates for

appointment. Each appointment shall be made by not less than a majority of all the cities in the portion of the county included in the south coast district having not less than a majority of the population of all the cities in the portion of the county included in the south coast district. Population shall be determined on the basis of the most recent verifiable census data developed by the Department of Finance. Persons residing in unincorporated areas or areas of a county outside the south coast district shall not be considered for the purposes of this subdivision.

(g) The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall have one or more of the qualifications specified in subdivision (c) or shall be a public member. None of those appointed members may be a locally elected official.

(h) Except for the member appointed by the San Bernardino County Board of Supervisors, all members shall be residents of the district.

(i) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 40420 is added to the Health and Safety Code, to read:

40420. (a) The south coast district shall be governed by a district board consisting of 12 members appointed as follows:

(1) One member appointed by the Governor, with the advice and consent of the Senate.

(2) One member appointed by the Senate Committee on Rules.

(3) One member appointed by the Speaker of the Assembly.

(4) Four members appointed by the boards of supervisors of the counties in the south coast district. Each board of supervisors shall appoint one of these members, who shall be one of the following:

(A) A member of the board of supervisors of the county making the appointment.

(B) A mayor or member of a city council from a city in the portion of the county making the appointment that is included in the south coast district.

(5) Three members appointed by cities in the south coast district. The city selection committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of these members, who shall be either a mayor or a member of the city council of a city in the portion of the county included in the south coast district.

(6) A member appointed by the cities of the western region of Los Angeles County, consisting of the Cities of Agoura Hills, Avalon, Beverly Hills, Carson, Compton, Culver City, El Segundo, Gardena, Hawthorne, Hermosa Beach, Hidden Hills, Inglewood, Lawndale, Lomita, Los Angeles, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates,

Santa Monica, Torrance, West Hollywood, and Westlake Village. These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the western region.

(7) A member appointed by the cities of the eastern region of Los Angeles County, consisting of the cities in Los Angeles County that are not listed in paragraph (6). These cities shall organize as a city selection committee for the purposes of subdivision (f). The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the South Coast Air Basin.

(c) The member appointed by the Governor shall be either a physician who has training and experience in the health effects of air pollution, an environmental engineer, a chemist, a meteorologist, or a specialist in air pollution control.

(d) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the south coast district board, to discharge all duties and responsibilities of a member of the south coast district board on a regular basis, and to participate actively in the affairs of the south coast district. No member may designate an alternate for any purpose or otherwise be represented by another in his or her capacity as a member of the south coast district board.

(e) Each appointment by a board of supervisors shall be considered and acted on at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall provide an opportunity for testimony on the qualifications of the candidates for appointment.

(f) The appointments by cities in the south coast district shall be considered and acted on at a duly noticed meeting of the city selection committee, which shall meet in a government building and provide an opportunity for testimony on the qualifications of the candidates for appointment. Each appointment shall be made by not less than a majority of all the cities in the portion of the county included in the south coast district having not less than a majority of the population of all the cities in the portion of the county included in the south coast district. Population shall be determined on the basis of the most recent verifiable census data developed by the Department of Finance. Persons residing in unincorporated areas or areas of a county outside the south coast district shall not be considered for the purposes of this subdivision.

(g) The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall have one or more of the qualifications

specified in subdivision (c) or shall be a public member. None of those appointed members may be a locally elected official.

(h) All members shall be residents of the district.

(i) This section shall become operative on January 1, 2006.

CHAPTER 687

An act to amend Section 12699.62 of, and to add Section 12699.525 to, the Insurance Code, relating to health care coverage, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 12699.525 is added to the Insurance Code, to read:

12699.525. The sum of eighty-nine million dollars ($89,000,000) is hereby appropriated in the 2002–03 fiscal year from the fund, and the sum of one hundred sixty-four million dollars ($164,000,000) is hereby appropriated for the 2002–03 fiscal year from the Federal Trust Fund, to the board and shall be available for encumbrance through June 30, 2004, for the purposes of this part.

SEC. 2. Section 12699.62 of the Insurance Code is amended to read:

12699.62. (a) The provisions of this part shall be implemented only if all of the following conditions are met:

(1) Federal financial participation is available for this purpose.

(2) Federal financial participation is approved.

(3) The Managed Risk Medical Insurance Board determines that the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) funds remain available after providing funds for all current enrollees and eligible children and parents that are likely to enroll in the Healthy Families Program and, to the extent funded through the federal State Children's Health Insurance Program, the Access for Infants and Mothers Program and Medi-Cal program, as determined by a Department of Finance estimate.

(4) Funds are appropriated specifically for this purpose.

(b) The State Department of Health Services and the Managed Risk Medical Insurance Board may accept funding necessary for the

preparation of the federal waiver applications or state plan amendments described in Section 12699.61 from a not-for-profit group or foundation.

CHAPTER 688

An act to amend Section 51189 of the Government Code, and to amend Section 13108.5 of the Health and Safety Code, relating to fire safety.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 51189 of the Government Code is amended to read:

51189. (a) The Legislature finds and declares that space and structure defensibility is essential to effective fire prevention. This defensibility extends beyond the vegetation management practices required by this chapter, and includes, but is not limited to, measures that increase the likelihood of a structure to withstand intrusion by fire, such as building design and construction requirements that use fire resistant building materials, and provide protection of structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic and eave vents and windows.

(b) No later than January 1, 2005, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, pursuant to Section 18930 of the Health and Safety Code, recommend building standards that provide for comprehensive space and structure defensibility to protect structures from fires spreading from adjacent structures or vegetation and vegetation from fires spreading from adjacent structures.

SEC. 2. Section 13108.5 of the Health and Safety Code is amended to read:

13108.5. (a) The State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, pursuant to Section 18930, propose fire protection building standards for roofs, exterior walls, structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic and eave vents and windows of buildings in fire hazard severity zones,

including very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code.

(b) Building standards adopted pursuant to this section shall also apply to buildings located in very high fire hazard severity zones designated pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, and other areas designated by a local agency following a finding supported by substantial evidence in the record that the requirements of the building standards adopted pursuant to this section are necessary for effective fire protection within the area.

(c) Building standards adopted pursuant to this section shall also apply to buildings located in urban wildland interface communities. A local agency may, at its discretion, include in or exclude from the requirements of these building standards any area in its jurisdiction following a finding supported by substantial evidence in the record at a public hearing that the requirements of these building standards are necessary or not necessary, respectively, for effective fire protection within the area. Changes made by a local agency to an urban wildland interface community area following a finding supported by substantial evidence in the record shall be final and shall not be rebuttable.

(d) For purposes of subdivision (c), ''urban wildland interface community'' means a community listed in ''Communities at Risk from Wild Fires,'' produced by the California Department of Forestry and Fire Protection, Fire And Resource Assessment Program, pursuant to the National Fire Plan, federal Fiscal Year 2001 Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291).

CHAPTER 689

An act to amend Sections 25299.50.1 and 25299.57 of, and to add Article 6.5 (commencing with Section 25299.64) to Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to underground storage tanks, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. 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 a 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, may not be paid from funds in 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 may 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) Notwithstanding Section 16304 of the Government Code, any funds appropriated for expenditure pursuant to this section shall be eligible for encumbrance until June 30, 2004. Notwithstanding Section 16304.1 of the Government Code, those encumbered funds shall be liquidated on or before December 31, 2005.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. 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 apply:

(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) (1) 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.

(2) If the claim is for reimbursement of costs incurred pursuant to a performance-based contract, Article 6.5 (commencing with Section 25299.64) shall apply to that claim.

(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. 3. Article 6.5 (commencing with Section 25299.64) is added to Chapter 6.75 of Division 20 of the Health and Safety Code, to read:

Article 6.5. Performance-Based Contract

25299.64. (a) For purposes of this article, the following definitions shall apply:

(1) ''Baseline concentration'' means the initial concentration of a constituent of concern prior to conducting corrective action pursuant to a performance-based contract.

(2) ''Constituent of concern'' means the chemical element, compound, or grouping, including, but not limited to, total petroleum

hydrocarbons, as in gasoline, that is present in the soil or groundwater and subject to corrective action.

(3) ''Performance-based contract'' means a written agreement approved by the board between a claimant and an appropriately licensed contractor, where the contractor agrees for a fixed price to take corrective action to reduce the concentrations of designated constituents of concern to specified concentrations.

(4) ''Remediation milestone'' means that a specified reduction in the concentrations of constituents of concern from baseline concentrations has been attained through corrective action. The reduction is expressed as a percentage of the total reduction required by the performance-based contract.

(b) The board may pay a claim pursuant to Section 25299.57 to reimburse the cost of a performance-based contract if the board approves the contract as being consistent with this article.

(c) A performance-based contract includes, but is not limited to, the total fixed price contract amount, designated constituents of concern, baseline concentrations, and if appropriate, a payment schedule indicating the amount to be paid when specified remediation milestones are attained.

(d) The board shall make payments based upon the reduction in the concentrations of designated constituents of concern to specified concentrations. If corrective action is estimated to take six months or more to achieve these concentrations and the remediation technology proposed is a pump-and-treat or other type of mechanical remediation technology, the board may pay a portion of the fixed price based on the attainment of specified remediation milestones or other performance parameters, in the following manner:

(1) The first payment shall include the amount of incurred capital costs upon successful installation and startup of the mechanical remediation system.

(2) The second payment shall be an amount equal to the agreed upon percent of the total contract price when the 25 percent remediation milestone is attained.

(3) The third payment shall be equal to an agreed upon percent of the total contract price when the 50 percent remediation milestone is attained.

(4) The fourth payment shall be equal to an agreed upon percent of the total contract price when the 75 percent remediation milestone is attained.

(5) The fifth payment shall be equal to an agreed upon percent of the total contract price when the 100 percent remediation milestone is attained.

(6) The final payment shall be the amount of the remaining contract price that shall be paid when the 100 percent remediation milestone has been maintained for one year following cessation of all active remediation.

25299.65. (a) The claimant shall submit multiple bids for a performance-based contract in accordance with paragraph (1) of subdivision (g) of Section 25299.57 and any regulations adopted by the board to implement that section.

(b) To assist claimants in soliciting bids for performance-based contract projects, the board shall advertise bid solicitations for these projects through the board's Web site. The board shall be the receiving address for the bids, and shall offer other assistance, upon request, in accordance with the regulations adopted pursuant to this chapter. The bids shall be sealed prior to submittal to the board. This subdivision does not prevent the board from approving a performance-based contract covering multisite cleanups, if the board determines that economies of scale will assist claimants in soliciting bids or reducing overall costs.

(c) The sites for which the board may consider approving a performance-based contract include, but are not limited to, all of the following:

(1) A site that had an unauthorized release reported to the board, the regional board, or local agency five or more years ago and active remediation has not begun.

(2) A site where corrective action has been implemented for two or more years pursuant to a corrective action plan that was approved by the board, the regional board, or local agency, but that corrective action has not been effective in reducing the concentrations of the constituents of concern to the satisfaction of that board or agency.

(3) A site where corrective action costs are expected to exceed the maximum fund reimbursement amount prior to case closure.

(4) A site where the board, the regional board, or local agency has recently determined that an unauthorized release has occurred that has the potential to impact nearby receptors or otherwise cause significant impact to the waters of the state.

(5) A site where an unauthorized release of MTBE, as defined in paragraph (2) of subdivision (a) of Section 25299.97, has occurred and corrective action has not been initiated or satisfactorily conducted, as determined by the board, the regional board, or local agency, or according to any regulations adopted pursuant to Section 25296.30.

(6) A site where the board, the regional board, or local agency has determined that corrective action other than ongoing monitoring of groundwater is more likely to reduce the concentrations of constituents of concern sooner and at a lower cost.

(d) This article does not preclude a claimant from requesting board approval of a performance-based contract to conduct corrective action at the claimant's site.

25299.66. This article does not limit or abridge the powers and duties granted to the board, the regional board, or local agency pursuant to any other provision of law.

CHAPTER 690

An act to add Section 13167.5 to the Water Code, relating to water.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 13167.5 is added to the Water Code, to read:

13167.5. (a) The state board or the regional board, as applicable, shall provide notice and a period of at least 30 days for public comment prior to the adoption of any of the following:

(1) Waste discharge requirements prescribed pursuant to Sections 13263 or 13377.

(2) Water reclamation requirements prescribed pursuant to Section 13523.

(3) An order issued pursuant to Section 13320.

(4) A time schedule order adopted pursuant to Section 13300 that sets forth a schedule of compliance and required actions relating to waste discharge requirements prescribed pursuant to Section 13263 or 13377.

(b) The notification required by subdivision (a) may be provided by mailing a draft of the waste discharge requirements, water reclamation requirements, time schedule order, or order issued pursuant to Section 13320 to each person who has requested notice of the specific item, or by posting a draft of the respective requirements or order on the official Internet site maintained by the state board or regional board, and providing notice of that posting by electronic mail to each person who has requested notice.

(c) This section does not require the state board or the regional board to provide more than one notice or more than one public comment period prior to the adoption of waste discharge requirements, water reclamation requirements, a time schedule order, or an order issued pursuant to Section 13320.

CHAPTER 691

An act to add and repeal Article 15.3 (commencing with Section 8340) of Chapter 2 of Part 6 of the Education Code, relating to child care.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Article 15.3 (commencing with Section 8340) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 15.3. Individualized County Child Care Subsidy Plan

8340. The County of San Mateo may, as a pilot project, develop and implement an individualized county child care subsidy plan. The plan shall ensure that child care subsidies received by the county are used to address local needs, conditions, and priorities of working families in the community.

8341. Prior to implementing the local subsidy plan, the County of San Mateo, in consultation with the department, shall develop an individualized county child care subsidy plan that includes the following four elements:

(a) An assessment to identify the county's goal for its subsidized child care system. The assessment shall examine whether the current structure of subsidized child care funding adequately supports working families in the county and whether the county's child care goals coincide with the state's requirements for funding, eligibility, priority, and reimbursement. The assessment shall also identify barriers in the state's child care subsidy system that inhibit the county from meeting its child care goals. In conducting the assessment, the county shall consider all of the following:

(1) The general demographics of families who are in need of child care, including employment, income, language, ethnic, and family composition.

(2) The current supply of available subsidized child care.

(3) The level of need for various types of subsidized child care services including, but not limited to, infant care, after-hours care, and care for children with exceptional needs.

(4) The county's self-sufficiency income level.

(5) Income eligibility levels for subsidized child care.

(6) Family fees.

(7) The cost of providing child care.

(8) The regional market rates, as established by the department, for different types of child care.

(9) The standard reimbursement rate or state per diem for centers operating under contracts with the department.

(10) Trends in the county's unemployment rate and housing affordability index.

(b) Development of a local policy to eliminate state-imposed regulatory barriers to the county's achievement of its desired outcomes for subsidized child care.

(1) The local policy shall do all of the following:

(A) Prioritize lowest income families first.

(B) Follow the family fee schedule established pursuant to subdivision (f) of Section 8263 for those families that are income eligible, as defined by Section 8263.1.

(C) Meet local goals that are consistent with the state's child care goals.

(D) Identify existing policies that would be affected by the county's child care subsidy plan.

(E) (i) Authorize any agency that provides child care and development services in San Mateo County through a contract with the department to apply to the department to amend existing contracts in order to benefit from the local policy once it is adopted.

(ii) The department shall approve an application to amend an existing contract if the child care subsidy plan is approved pursuant to subdivision (b) of Section 8342, or modified pursuant to subdivision (c) of Section 8342.

(iii) The contract of a department contractor who does not elect to request an amendment to its contract remains operative and enforceable.

(2) (A) The County of San Mateo shall, by the end of the first fiscal year of operation under the approved child care subsidy plan, demonstrate an increase in the aggregate child days of enrollment in the county as compared to the enrollment in the final quarter of the 2002–03 fiscal year.

(B) The amount of the increase shall be at least equal to the aggregate child days of enrollment in the final quarter of the 2002–03 fiscal year for all contracts amended as provided in subparagraph (E) of paragraph 1, under which the contractor receives an increase in its reimbursement rate, times 2 percent.

(3) The local policy may supersede state law concerning child care subsidy programs with regard only to the following factors:

(A) Eligibility criteria including, but not limited to, age, family size, time limits, income level, inclusion of former and current CalWORKs participants, and special needs considerations, except that the local policy may not deny or reduce eligibility of a family that qualifies for

child care pursuant to Section 8353. Under the local policy, a family that qualifies for child care pursuant to Section 8354 shall be treated for purposes of eligibility and fees in the same manner as a family that qualifies for subsidized child care on another basis pursuant to the local policy.

(B) Fees including, but not limited to, family fees, sliding scale fees, and copayments for those families that are not income eligible, as defined by Section 8263.1.

(C) Reimbursement rates.

(D) Methods of maximizing the efficient use of subsidy funds, including, but not limited to, multiyear contracting with the department for center-based child care, and interagency agreements that allow for flexible and temporary transfer of funds among agencies.

(c) Recognition that all funding sources utilized by direct service contractors that provide child care and development services in San Mateo County are eligible to be included in the child care subsidy plan of the county.

(d) Establishment of measurable outcomes to evaluate the success of the plan to achieve the county's child care goals and to overcome any barriers identified in the state's child care subsidy system. The Department of Social Services shall have an opportunity to review and comment on the proposed measurable outcomes before they are submitted to the local child care planning council for approval pursuant to Section 8342.

8341.5. To ensure that the annual and final reports required pursuant to Section 8343 provide useful comparative information, the Legislative Analyst and the Senate Office of Research shall review the evaluation design, the baseline data, and the data collection proposed in the child care subsidy plan of the county before the plan is submitted to the local child care planning council for approval.

8342. (a) The plan shall be submitted to the local child care planning council for approval. Upon approval of the plan by the local child care planning council, the county board of supervisors shall hold at least one public hearing on the plan. Following the hearing, if the county board of supervisors votes in favor of the plan, the plan shall be submitted to the Child Development Division of the department for review.

(b) Within 30 days of receiving the plan, the Child Development Division shall review and either approve or disapprove the plan.

(c) Within 30 days of receiving any modification to the plan, the Child Development Division shall review and either approve or disapprove that modification to the plan.

(d) The Child Development Division may disapprove only those portions of the plan or modifications to the plan that are not in conformance with this article or that are in conflict with federal law.

8343. (a) Upon approval of the plan by the Child Development Division, the County of San Mateo shall annually prepare and submit to the Legislature, the Department of Social Services, and the department a report that summarizes the success of the pilot project and the county's ability to maximize the use of funds and to improve and stabilize child care in the county.

(b) On or before December 31, 2008, the County of San Mateo shall submit a final report to the Legislature, the Department of Social Services, and the department summarizing the impact of the plan on the child care needs of working families.

8344. The County of San Mateo may implement its individualized county child care subsidy plan until January 1, 2009, at which date the County of San Mateo shall terminate the plan. Between January 1, 2009, and January 1, 2011, the County of San Mateo shall phase out the individualized county child care subsidy plan and, as of January 1, 2011, shall implement the state's requirements for child care subsidies. A child enrolling for the first time for subsidized child care in San Mateo County after January 1, 2009, may not be enrolled in the pilot program established pursuant to this article and is subject to existing state laws and regulations regarding child care eligibility and priority.

8345. A participating contractor shall receive any increase or decrease in funding that the contractor would have received if the contractor had not participated in the local subsidy plan.

8346. This article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

CHAPTER 692

An act to amend Sections 25354 and 25364 of the Public Resources Code, relating to energy.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 25354 of the Public Resources Code is amended to read:

25354. (a) Each refiner and major marketer shall submit information each month to the commission in such form and extent as the commission prescribes pursuant to this section. The information shall be submitted within 30 days after the end of each monthly reporting period and shall include the following:

(1) Refiners shall report, for each of their refineries, feedstock inputs, origin of petroleum receipts, imports of finished petroleum products and blendstocks, by type, including the source of those imports, exports of finished petroleum products and blendstocks, by type, including the destination of those exports, refinery outputs, refinery stocks, and finished product supply and distribution, including all gasoline sold unbranded by the refiner, blender, or importer.

(2) Major marketers shall report on petroleum product receipts and the sources of these receipts, inventories of finished petroleum products and blendstocks, by type, distributions through branded and unbranded distribution networks, and exports of finished petroleum products and blendstocks, by type, from the state.

(b) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall annually submit information to the commission in such form and extent as the commission prescribes pursuant to this section. The information shall be submitted within 30 days after the end of each reporting period, and shall include the following:

(1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The commission may prescribe rules and regulations that exclude pipeline and transportation modes operated entirely on property owned by major oil transporters from the reporting requirements of this section if the data or information is not needed to fulfill the purposes of this chapter. The provision of the information shall not be construed to increase or decrease any authority the Public Utilities Commission may otherwise have.

(2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions.

(3) Major oil producers shall, with respect to thermally enhanced oil recovery operations, report annually by designated oil field, the monthly use, as fuel, of crude oil and natural gas.

(4) Refiners shall report on facility capacity, and utilization and method of transportation of refinery receipts and distributions.

(5) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

(c) Each person required to report pursuant to subdivision (a) shall submit a projection each month of the information to be submitted

pursuant to subdivision (a) for the quarter following the month in which the information is submitted to the commission.

(d) In addition to the data required under subdivision (a), each integrated oil refiner (produces, refines, transports, and markets in interstate commerce) who supplies more than 500 branded retail outlets in California shall submit to the commission an annual industry forecast for Petroleum Administration for Defense, District V (covering Arizona, Nevada, Washington, Oregon, California, Alaska, and Hawaii). The forecast shall include the information to be submitted under subdivision (a), and shall be submitted by March 15 of each year. The commission may require California-specific forecasts. However, those forecasts shall be required only if the commission finds them necessary to carry out its responsibilities.

(e) The commission may by order or regulation modify the reporting period as to any individual item of information setting forth in the order or regulation its reason for so doing.

(f) The commission may request additional information as necessary to perform its responsibilities under this chapter.

(g) Any person required to submit information or data under this chapter, in lieu thereof, may submit a report made to any other governmental agency, if:

(1) The alternate report or reports contain all of the information or data required by specific request under this chapter.

(2) The person clearly identifies the specific request to which the alternate report is responsive.

(h) Each refiner shall submit to the commission, within 30 days after the end of each monthly reporting period, all of the following information in such form and extent as the commission prescribes:

(1) Monthly California weighted average prices and sales volumes of finished leaded regular, unleaded regular, and premium motor gasoline sold through company-operated retail outlets, to other end-users, and to wholesale customers.

(2) Monthly California weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil.

(3) Monthly California weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil with 1 percent or less sulfur, residual fuel oil with greater than 1 percent sulfur and consumer grade propane.

(i) (1) Beginning the first week after the effective date of the act that added this subdivision, and each week thereafter, an oil refiner, oil producer, petroleum product transporter, petroleum product marketer,

petroleum product pipeline operator, and terminal operator, as designated by the commission, shall submit a report in the form and extent as the commission prescribes pursuant to this section. The commission may determine the form and extent necessary by order or by regulation.

(2) A report may include any of the following information:

(A) Receipts and inventory levels of crude oil and petroleum products at each refinery and terminal location.

(B) Amount of gasoline, diesel, jet fuel, blending components, and other petroleum products imported and exported.

(C) Amount of gasoline, diesel, jet fuel, blending components, and other petroleum products transported intrastate by marine vessel.

(D) Amount of crude oil imported, including information identifying the source of the crude oil.

(E) The regional average of invoiced retailer buying price. This subparagraph does not either preclude or augment the current authority of the commission to collect additional data under subdivision (f).

(3) This subdivision is intended to clarify the commission's existing authority under subdivision (f) to collect specific information. This subdivision does not either preclude or augment the existing authority of the commission to collect information.

SEC. 2. Section 25364 of the Public Resources Code is amended to read:

25364. (a) Any person required to present information to the commission pursuant to Section 25354 may request that specific information be held in confidence. Information requested to be held in confidence shall be presumed to be confidential.

(b) Information presented to the commission pursuant to Section 25354 shall be held in confidence by the commission or aggregated to the extent necessary to assure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information.

(c) (1) Whenever the commission receives a request to publicly disclose unaggregated information, or otherwise proposes to publicly disclose information submitted pursuant to Section 25354, notice of the request or proposal shall be provided to the person submitting the information. The notice shall indicate the form in which the information is to be released. Upon receipt of notice, the person submitting the information shall have 10 working days in which to respond to the notice to justify the claim of confidentiality on each specific item of information covered by the notice on the basis that public disclosure of the specific information would result in unfair competitive disadvantage to the person supplying the information.

(2) The commission shall consider the respondent's submittal in determining whether to publicly disclose the information submitted to it to which a claim of confidentiality is made. The commission shall issue a written decision which sets forth its reasons for making the determination whether each item of information for which a claim of confidentiality is made shall remain confidential or shall be publicly disclosed.

(d) The commission shall not make public disclosure of information submitted to it pursuant to Section 25354 within 10 working days after the commission has issued its written decision required in this section.

(e) No information submitted to the commission pursuant to Section 25354 shall be deemed confidential if the person submitting the information or data has made it public.

(f) With respect to petroleum products and blendstocks reported by type pursuant to paragraph (1) or (2) of subdivision (a) of Section 25354 and information provided pursuant to subdivision (h) or (i) of Section 25354, neither the commission nor any employee of the commission may do any of the following:

(1) Use the information furnished under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) or (i) of Section 25354 for any purpose other than the statistical purposes for which it is supplied.

(2) Make any publication whereby the information furnished by any particular establishment or individual under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) or (i) of Section 25354 can be identified.

(3) Permit anyone other than commission members and employees of the commission to examine the individual reports provided under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) or (i) of Section 25354.

(g) Notwithstanding any other provision of law, the commission may disclose confidential information received pursuant to subdivision (a) of Section 25304 or Section 25354 to the State Air Resources Board if the state board agrees to keep the information confidential. With respect to the information it receives, the state board shall be subject to all pertinent provisions of this section.

CHAPTER 693

An act to add Chapter 6.5 (commencing with Section 5808) to Division 5 of the Public Resources Code, relating to watersheds.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

SECTION 1. Chapter 6.5 (commencing with Section 5808) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 6.5. CALIFORNIA WATERSHED PROTECTION AND RESTORATION ACT

5808. This chapter shall be known, and may be cited, as the California Watershed Protection and Restoration Act.

5808.1. The Legislature finds and declares the following:

(a) In addition to the statutory and regulatory policies and programs established pursuant to the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), Division 20.4 (commencing with Section 30901), and Chapter 1.696 (commencing with Section 5096.600) of Division 5, Division 7 (commencing with Section 13000) and Division 26.5 (commencing with Section 79500) of the Water Code, and other statutes and regulations affecting watershed planning and protection, efforts to conserve, maintain, restore, protect, enhance, and utilize California's rivers and streams for habitat, recreation, water supply, public health, economic development, and other purposes have a greater likelihood of being successful when governments, including federal and tribal governments, work in partnership with citizens in an effort to combine community resources, local initiative, and state agency support.

(b) The Legislature enacted Assembly Bill 2117 of the 1999–2000 Regular Session (Ch. 735, Stats. 2000) to require the California Environmental Protection Agency and the Resources Agency to evaluate how effective voluntary, community-based, collaborative watershed efforts or partnerships are in contributing to the protection and enhancement of California's natural resources, and what the state can do to assist them.

(c) The agencies produced a Report to the Legislature: Addressing the Need to Protect California's Watersheds—Working with Local Partnerships, April 2002.

(d) The recommendations of that report form the basis and factual support for promoting and encouraging local partnerships in watershed restoration, protection, and management as one of the nonregulatory means of improving watersheds.

(e) It is the intent of the Legislature that this act will bring more understanding to government agencies of the nature, scope, and complexity of working on a watershed basis at the local and regional level.

(f) To the extent consistent with the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), Division 20.4 (commencing with Section 30901) and Chapter 1.696 (commencing with Section 5096.600) of Division 5, Division 7 (commencing with Section 13000) and Division 26.5 (commencing with Section 79500) of the Water Code, and other statutes and regulations affecting watershed planning and protection, the California Environmental Protection Agency and the Resources Agency are encouraged to provide assistance and grants under this chapter in a uniform and predictable manner to those who choose to participate in the important work of watershed restoration and enhancement pursuant to this chapter.

5808.2. (a) In addition to the statutory and regulatory policies and programs established pursuant to the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), Division 20.4 (commencing with Section 30901) and Chapter 1.696 (commencing with Section 5096.600) of Division 5, Division 7 (commencing with Section 13000) and Division 26.5 (commencing with Section 79500) of the Water Code, and other statutes and regulations affecting watershed planning and protection, voluntary local collaborative partnerships that assist in improving the condition of the watershed as expeditiously as possible are in the state's interest in terms of effectiveness, citizen involvement, and community responsibility.

(b) The use of local and regional watershed level planning and management can be an efficient and effective mechanism to improve the condition of the watershed.

(c) To the extent consistent with the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), Division 20.4 (commencing with Section 30901) and Chapter 1.696 (commencing with Section 5096.600) of Division 5, Division 7 (commencing with Section 13000) and Division 26.5 (commencing with Section 79500) of the Water Code, and other statutes and regulations affecting watershed planning and protection, the memorandum of understanding required under Section 30946, guidelines adopted by state agencies for use by local watershed partnerships shall provide flexible mechanisms to achieve quantifiable, and monitored watershed objectives.

(d) In addition to the statutory and regulatory policies and programs established pursuant to the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), Division 20.4 (commencing with Section 30901) and Chapter 1.696 (commencing with Section 5096.600) of Division 5, Division 7 (commencing with Section 13000) and Division 26.5 (commencing with Section 79500) of the Water Code, and other statutes and regulations affecting watershed planning and protection, local governments, special districts, and other interested parties may participate in local watershed partnerships in order to ensure efficient,

long-lasting, and effective watershed restoration and management and to improve the watershed.

(e) To the extent funds that are available for the purposes in subdivision (d), state agencies with jurisdiction over watershed planning and protection may provide technical assistance to watershed management partnerships through training, advice, and manuals describing assessments, plans, and monitoring activities that are consistent with watershed protection laws and regulations.

CHAPTER 694

An act to amend Section 51257 of, and to add Section 51250 to, the Government Code, relating to agricultural land conservation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 51250 is added to the Government Code, to read:

51250. (a) The purpose of this section is to identify certain structures that constitute material breaches of contract under this chapter and to provide an alternate remedy to a contract cancellation petition by the landowner. Accordingly, this remedy is in addition to any other available remedies for breach of contract. Except as expressly provided in this section, this section is not intended to change the existing land use decisionmaking and enforcement authority of cities and counties including the authority conferred upon them by this chapter to administer agricultural preserves and contracts.

(b) For purposes of this section, a breach is material if, on a parcel under contract, both of the following conditions are met:

(1) A commercial, industrial, or residential building is constructed that is not allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use.

(2) The total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet for either of the following:

(A) All property subject to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners on January 1, 2004.

(B) All property subject to a contract entered into after January 1, 2004, covering property not subject to a contract on January 1, 2004.

For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or, pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision.

(c) The department shall notify the city or county if the department discovers a possible breach.

(d) The city or county shall, upon notification by the department or upon discovery by the city or county of a possible material breach, determine if there is a valid contract and if it is likely that the breach is material. In its investigation, the city or county shall endeavor to contact the landowner or his or her representative to learn the landowner's explanation of the facts and circumstances related to the possible material breach.

(e) Within 10 days of determining that it is likely that a material breach exists, the city or county shall notify the landowner and the department by certified mail, return receipt requested. This notice shall include the reasons for the determination and a copy of the contract.

(f) Within 60 days of receiving the notice, the landowner or his or her representative may notify the city or the county that the landowner intends to eliminate the conditions that resulted in the material breach within 60 days. If the landowner eliminates the conditions that resulted in the material breach within 60 days, the city or county shall take no further action under this section with respect to the building at issue. If the landowner notifies the city or county of the intention to eliminate the conditions but fails to do so, the city or county shall proceed with the hearing required in subdivision (g).

(g) The city or county shall schedule a hearing no more than 120 days after the notice is provided to the landowner as required in subdivision (e). The city or county shall give notice of the public hearing by certified mail, return receipt requested to the landowner and the department at least 30 days prior to the hearing. The city or county shall give notice of the public hearing by first-class mail to every owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the contracted parcel on which the likely material breach exists. The city or county shall also give published notice pursuant to Section 6061. The notice shall include the date, time, and place of the public hearing. Not less than five days before the hearing, the department may request that the city or county provide the department, at the department's expense, a recorded transcript of the hearing not more than 30 days after the hearing.

(h) At the public hearing, the city or county shall consider any oral or written testimony and then determine if a material breach exists.

(i) If the city or county determines that a material breach exists, the city or county shall do one of the following:

(1) Order the landowner to eliminate the conditions that resulted in the material breach within 60 days.

(2) Assess the monetary penalty pursuant to subdivision (j) and terminate the contract on that portion of the contracted parcel that has been made incompatible by the material breach.

If the landowner disagrees with the determination, he or she may pursue any other legal remedy that is available.

(j) The monetary penalty shall be 25 percent of the unrestricted fair market value of the land rendered incompatible by the breach, plus 25 percent of the value of the incompatible building and any related improvements on the contracted land. The basis for the valuation of the penalty shall be an independent appraisal of the current unrestricted fair market value of the property that is subject to the contract and affected by the incompatible use or uses, and a valuation of any buildings and any related improvements within the area affected by the incompatible use or uses. If the city or county determines that equity would permit a lesser penalty, the city or county, the landowner, and the department may negotiate a reduction in the penalty based on the factors specified in subdivision (k), but a reduction in the penalty may not exceed one-half of the penalty. If negotiations are to be held, the city or county shall provide the department 15 days' notice before the first negotiation. If the department chooses not to be a negotiator or fails to send a negotiator, the city or county and the landowner may negotiate the penalty.

(k) In determining the amount of a lesser penalty, the negotiators shall consider:

(1) The nature, circumstances, extent, and gravity of the material breach.

(2) Whether the landowner's actions were willful, knowing, or negligent with respect to the material breach.

(3) The landowner's culpability in contributing to the material breach and whether the actions of prior landowners subject to the contract contributed to the material breach.

(4) Whether the actions of the city or county contributed to the material breach.

(5) Whether the landowner notified the city or county that the landowner would eliminate the conditions that resulted in the material breach within 30 days, but failed to do so.

(6) The willingness of the landowner to rapidly resolve the issue of the material breach.

(7) Any other mitigating or aggravating factors that justice may require.

(*l*) If the landowner is ordered to eliminate the conditions that resulted in the material breach pursuant to paragraph (1) of subdivision (i) but the landowner fails to do so within the time specified by the city or county, the city or county may abate the material breach as a public nuisance pursuant to any applicable provisions of law.

(m) If the city or county terminates the contract pursuant to paragraph (2) of subdivision (i), the city or county shall record a notice of termination following the procedures of Section 51283.4.

(n) The assessment of a monetary penalty pursuant to subdivision (i) shall be secured by a lien payable to the county treasurer of the county within which the property is located, in the amount assessed pursuant to subdivision (j) or (k). Once properly recorded and indexed, the lien shall have the force, effect, and priority of a judgment lien. The lien document shall provide both of the following:

(1) The name of the real property owner of record and shall contain either the legal description or the assessor's parcel number of the real property to which the lien attaches.

(2) A direct telephone number and address that interested parties may contact to determine the final amount of any applicable assessments and penalties owing on the lien pursuant to this section.

(o) If the lien is not paid within 60 days of recording, simple interest shall accrue on the unpaid penalty at the rate of 10 percent per year, and shall continue to accrue until the penalty is paid, prior to all other claims except those with superior status under federal or state law.

(p) Upon payment of the lien, the city or county shall record a release of lien and a certificate of contract termination by breach with the county recorder for the land rendered incompatible by the breach.

(q) The city or county may deduct from any funds received pursuant to this chapter the amount of the actual costs of administering this section and shall transmit the balance of the funds by the county treasurer to the Controller for deposit in the Soil Conservation Fund.

(r) (1) The department may carry out the responsibilities of a city or county under this section if either of the following occurs:

(A) The city or county fails to determine whether there is a material breach within 210 days of the discovery of the breach.

(B) The city or county fails to complete the requirements of this section within 180 days of the determination that a material breach exists.

(2) The city or county may request in writing to the department, the department's approval for an extension of time for the city or county to act and the reasons for the extension. Approval may not be unreasonably withheld by the department.

(3) The department shall notify the city or county 30 days prior to its exercise of any responsibility under this subdivision.

(4) This section shall not be construed to limit the authority of the Secretary of the Resources Agency under Section 16146 or 16147.

(s) (1) This section does not apply to any of the following:

(A) A building constructed prior to January 1, 2004, or permitted by a city or county prior to January 1, 2004.

(B) A building that was not a material breach at the time of construction but became a material breach because of a change in law or ordinance.

(C) A building owned by the state.

(2) Subject to paragraphs (4) and (5), this section does not apply when a board or council cancels a contract pursuant to Article 5 (commencing with Section 51280) or terminates a contract pursuant to Section 51243.5 or when a public agency, as defined by subdivision (a) of Section 51291, acquires land subject to contract by, or in lieu of, eminent domain pursuant to Article 6 (commencing with Section 51290) unless either of the following occurs:

(A) The action canceling or terminating the contract is rescinded.

(B) A court determines that the cancellation or termination was not properly executed pursuant to this chapter, or that the land continues to be subject to the contract.

(3) On the motion of any party with standing to bring an action for breach, any court hearing an action challenging the termination of a contract entered into under this chapter shall consolidate any action for breach, including the remedies for material breach available pursuant to this section.

(4) Paragraph (2) shall not be applicable for a cancellation or termination occurring after January 1, 2004, unless the affected landowner provides to the administering board or council and to the department, within 30 days after the cancellation or termination, a notarized statement, in a form acceptable to the department, signed under penalty of perjury and filed with the county recorder, acknowledging that the breach provisions of this section may apply if any of the following conditions are met:

(A) The action by the local government is rescinded.

(B) A court permanently enjoins, voids, or rescinds the cancellation or termination.

(C) For any other reason, the land continues to be subject to the contract.

(5) Paragraph (2) does not apply for a cancellation or termination occurring before January 1, 2004, unless the landowner provides the statement required in paragraph (4) prior to the approval of a building permit necessary for the construction of a commercial, industrial, or residential building.

(t) It is the intent of the Legislature to encourage cities and counties, in consultation with contracting landowners and the department, to review existing Williamson Act enforcement programs and consider any additions or improvements that would make local enforcement more effective, equitable, or widely acceptable to the affected landowners. Cities and counties are also encouraged to include enforcement provisions within the terms of the contracts, with the consent of contracting landowners.

SEC. 2. Section 51257 of the Government Code is amended to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2004.

(d) In the year 2008, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2009, deletes or extends that date.

SEC. 3. In enacting Section 2 of this bill, the Legislature finds and declares that the extension of the sunset provisions of Section 51257 of the Government Code shall not be construed as making any other change in the meaning or interpretation of Section 51257 of the Government Code.

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

CHAPTER 695

An act to amend Sections 21091 and 21092.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report may 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 may 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 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 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 each 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.

(3) (A) With respect to the consideration of comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice pursuant to Section 21080.4, the lead agency shall accept comments via e-mail and shall treat e-mail comments as equivalent to written comments.

(B) Any law or regulation relating to written comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice received pursuant to Section 21080.4, shall also apply to e-mail comments received for those reasons.

(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 may not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) A 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. A designated person shall notify the decisionmaking body of this request.

(4) A 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 may not be approved by the Office of Planning and Research for a proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) An 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 comments that were received and considered pursuant to paragraph (1) of subdivision (d).

SEC. 3. Section 21092.2 of the Public Resources Code is amended to read:

21092.2. The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to every person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. If the agency offers to provide the notices by e-mail, upon filing a written request for notices, a person may request that the notices be provided to him or her by e-mail. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service. This section may not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

CHAPTER 696

An act to amend Sections 25404, 25404.1.1, 25404.3, 25501.4, 25532, and 25540 of, and to add Section 25404.1.3 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 25404 of the Health and Safety Code, as amended by Section 53 of Chapter 999 of the Statutes of 2002, 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) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(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. 1.5. Section 25404 of the Health and Safety Code, as amended by Section 53 of Chapter 999 of the Statutes of 2002, 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, 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, and persons managing perchlorate materials.

(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) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(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 this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(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. 2. Section 25404 of the Health and Safety Code, as added by Section 54 of Chapter 999 of the Statutes of 2002, 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) ''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) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(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. 2.5. Section 25404 of the Health and Safety Code, as added by Section 54 of Chapter 999 of the Statutes of 2002, 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) ''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, 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, and persons managing perchlorate materials.

(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) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(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 this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(f) This section shall become operative January 1, 2006.

SEC. 3. Section 25404.1.1 of the Health and Safety Code is amended 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), (c), and (e) 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) (1) A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the unified program agency may suspend or revoke the permit or permit element. If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(*l*) 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. 4. Section 25404.1.3 is added to the Health and Safety Code, to read:

25404.1.3. (a) A unified program agency may apply to the clerk of the appropriate court for a judgment to collect an administrative penalty for an administrative order or decision that has become final pursuant to subdivision (d) or (f) of Section 25404.1.1 and imposes a penalty pursuant to Section 25401.1.1, if a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code.

(b) The UPA's application to the court clerk shall include a certified copy of the final administrative order or decision that copy of the order or decision constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

SEC. 5. Section 25404.3 of the Health and Safety Code is amended to read:

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on

the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) All other agencies proposed to implement certain elements of the unified shall maintain an agreement with the applicant agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it

determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

SEC. 6. Section 25501.4 of the Health and Safety Code is amended to read:

25501.4. Notwithstanding subdivision (d) of Section 25501, ''business'' also includes all of the following:

(a) The federal government, to the extent authorized by federal law.

(b) Any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(c) Any agency, department, office, board, commission, or bureau of a city, county or district.

SEC. 7. Section 25532 of the Health and Safety Code is amended to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) ''Accidental release'' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) ''Administering agency'' means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) ''Covered process'' means a process that has a regulated substance present in more than a threshold quantity.

(d) ''Modified stationary source'' means an addition or change to a stationary source that qualifies as a ''major change,'' as defined in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations. ''Modified

stationary source'' does not include an increase in production up to the source's existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) ''Process'' means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) ''Qualified person'' means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) ''Regulated substance'' means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and, therefore, should remain on the list of regulated substances until

completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of the extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) ''Regulated substances accident risk'' means a potential for the accidental release of a regulated substance into the environment that could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) ''RMP'' means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) ''State threshold quantity'' means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) ''Stationary source'' means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(*l*) ''Threshold quantity'' means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

(m) ''Person'' means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. ''Person'' also includes any city, county, city and county, district, commission, the state or any department, agency or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

SEC. 8. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any person or 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 person or 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 person or 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. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or 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 any hazardous materials.

SEC. 9. Sections 1.5 and 2.5 of this bill incorporate amendments to Section 25404 of the Health and Safety Code proposed by both this bill and AB 826. Sections 1.5 and 2.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 25404 of the Health and Safety Code, and (3) this bill is enacted after AB 826, in which case Sections 1 and 2 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 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 697

An act to amend Sections 8102, 8103, 8104, and 13563 of, and to add and repeal Section 6487.06 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6487.06 is added to the Revenue and Taxation Code, to read:

6487.06. (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is limited to the three-year period beginning after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For purposes of this section, a ''qualifying purchaser'' is a person that voluntarily files an Individual Use Tax Return for tangible personal property that is purchased from a retailer outside of this state for storage, use, or other consumption in this state, and that meets all of the following conditions:

(1) The purchaser resides or is located within this state and has not previously done either of the following:

(A) Registered with the State Board of Equalization.

(B) Filed an Individual Use Tax Return with the State Board of Equalization.

(2) The purchaser is not engaged in business in this state as a retailer, as defined in Section 6015.

(3) The purchaser has not been contacted by the State Board of Equalization regarding failure to report the use tax imposed by Section 6202.

(4) The State Board of Equalization has made a determination that the purchaser's failure to file an Individual Use Tax Return or to otherwise report, or pay the use tax imposed by Section 6202 was due to reasonable cause and was not caused by reason of negligence, intentional disregard of the law, or by an intent to evade the taxes imposed by this part.

(c) If the State Board of Equalization makes a determination that the purchaser's failure to timely report or remit the taxes imposed by this part is due to reasonable cause or due to circumstances beyond the purchaser's control, the purchaser may be relieved of any penalties imposed by this part. Any purchaser seeking relief from penalties imposed by this part shall file a statement, signed under penalty of perjury, setting forth the facts that form the basis for the claim for relief.

(d) This section shall not apply to purchases of vehicles, vessels, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(e) The State Board of Equalization shall submit to the Legislature before January 1, 2005, a report that includes the following information:

(1) The number of qualifying purchasers who received the benefits afforded by this section.

(2) The amount of use tax revenue received by the state from the qualifying purchasers described in paragraph (1).

(3) Recommendations for modifying, eliminating, or continuing the operation of, any or all of the provisions of this section.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

SEC. 2. Section 8102 of the Revenue and Taxation Code is amended to read:

8102. (a) The claimant of a refund shall present to the Controller a claim supported by the original invoice showing the purchase or other evidence of each purchase that is satisfactory to the Controller. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. The claim shall state the total amount of motor vehicle fuel covered by the claim and if the motor vehicle fuel was exported, a statement that the claimant has proof of exportation. The claim shall state that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim for refund. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalties of perjury. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(b) Each claim for refund under this section shall be made on a form prescribed by the Controller and shall be filed for a calendar year, except for claims relating to exportation of fuel. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars ($750) is refundable under this section with respect to any motor vehicle fuel used, sold, or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the Controller may require the filing of claims for refund for other than yearly periods. Export claims may be filed at any time.

SEC. 3. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the properly completed claim and the invoice or other evidence of each purchase that is satisfactory to the Controller, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the motor vehicle fuel in respect to which the refund is claimed.

SEC. 4. Section 8104 of the Revenue and Taxation Code is amended to read:

8104. In order to establish the validity of any claim the Controller may, upon demand, examine the books and records of the claimant for that purpose. The failure of the claimant to accede to that demand constitutes a waiver of all right to the refund claimed on account of the transactions questioned. The examination may be made either through employees of the office of the Controller or of the office of the board. Supporting evidence of all purchases included in a claim for refund shall be maintained by the claimant for inspection by the Controller or the office of the board for four years after the date of refund.

SEC. 5. 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. That interest shall be allowed from the date on which payment would have become delinquent, if not paid, or the date of actual payment, whichever is later in time, to the date

preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Controller.

CHAPTER 698

An act relating to state government.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. The provisions of Section 2.00 of the Budget Act of 2002 (Chapter 379 of the Statutes of 2002) that apply to the items of the Budget Act that are augmented by appropriations made pursuant to the following provisions, are also applicable to those augmentations:

(a) Sections 3 to 5, inclusive, of Chapter 727 of the Statutes of 2002.

(b) Section 7 of Chapter 983 of the Statutes of 2002.

(c) Section 2 of Chapter 984 of the Statutes of 2002.

(d) Sections 2 and 4 of Chapter 1126 of the Statutes of 2002, and Sections 21 and 24 of Chapter 1127 of the Statutes of 2002.

CHAPTER 699

An act to amend Sections 10430, 10515, 10518, and 10526 of, to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of, and to add Article 7.8 (commencing with Section 10830) to Chapter 2.5 of, Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, 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 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 2.5 (commencing with Section 10510.4) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 2.5. Contracts with Private Architects, Engineering, Environmental, Land Surveying, and Construction Project Management Firms

10510.4. For purposes of this article, the following definitions apply:

(a) ''Firm'' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) ''Architectural, landscape architectural, engineering, environmental, and land surveying services'' include those professional

services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and their employees may logically or justifiably perform.

(c) ''Construction project management'' means those services provided by a licensed architect, registered engineer, or licensed general contractor that meet the requirements of Section 10510.9 for management and supervision of work performed on university construction projects.

(d) ''Environmental services'' means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. ''Environmental services'' also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(e) ''Real property development services'' means those services undertaken by a real estate developer in connection with the development of a developer-owned project on land owned or controlled by the university, including, but not limited to, environmental analysis, landscape planning, site design, market and financial feasibility, and other incidental services that a real estate developer may perform for the project.

10510.5. (a) Selection by the University of California for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, real property development services, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, the university shall adopt procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the university. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837 of the Government Code.

(b) These procedures shall specifically prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit university employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section.

10510.6. (a) The University of California shall follow this section in negotiating fees and executing a contract for professional consulting services of a private architectural, landscape architectural, engineering,

land surveying, environmental, real property development services, or construction project management firm.

(b) After providing notification to the successful firm of its selection, the university shall provide written instructions for the negotiations that are to follow. These instructions shall provide the private consulting firm with necessary information that shall allow the negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin negotiations.

(c) Upon the completion of negotiations, the university and the private firm shall proceed to execute a contract that the university shall complete within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The university and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

(d) In the event an impasse is reached in negotiations, the university may terminate negotiations and enter into negotiations with the next qualified firm, in the same manner as prescribed in Section 10510.8 with respect to management services contracts.

10510.7. (a) In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, real property development services, and construction project management services, the university shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(b) (1) Statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, real property development services, or construction project management services shall be made by the university through advertisements placed in the California State Contracts Register and in publications of the respective professional societies and organizations of persons that perform those services. Alternatively, the university may develop policies to provide for electronic statewide notice of the required announcements to ensure notification through, at a minimum, appropriate professional societies and organizations and the California State Contracts Register, to those persons that perform the services sought to be procured.

(2) The university, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the university, together with those that may be submitted by other firms regarding the proposed project.

(3) (A) The university, for each proposed project, shall conduct discussions with no less than three firms regarding anticipated concepts

and the relative utility of alternative methods of approach for furnishing the required services.

(B) The university shall select, from the firms with which it conducted discussions in order of preference, based upon criteria established and published by the university, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(C) If a project announcement results in submissions from fewer than three qualified firms, the university may then select from the available qualified firms and shall document its efforts to receive submissions from additional firms.

(D) These procedures shall specifically prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit university employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section.

(4) This subdivision does not apply to a contract for the services described in Section 10510.4 with a total contract cost of one hundred thousand dollars ($100,000) or less, provided that the type of project for which the contract is awarded is identified by the university in an annual announcement, made in accordance with the provisions of paragraph (1), that identifies the project needs of the university that are projected to have a total contract price of one hundred thousand dollars ($100,000) or less.

10510.8. (a) The university shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, real property development services, and construction project management services at compensation that the university determines is fair and reasonable to the University of California.

(b) Should the university be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the university determines to be fair and reasonable to the University of California, negotiations with that firm shall be formally terminated. The university shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the university shall terminate negotiations. The university shall then undertake negotiations with the third most qualified firm.

(c) Should the university be unable to negotiate a satisfactory contract with any of the selected firms, the university shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this article until an agreement is reached.

10510.9. Any individual or firm proposing to provide construction project management services pursuant to this article shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

SEC. 3. Section 10515 of the Public Contract Code is amended to read:

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 July 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 either of the following:

(1) 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.

(2) Consulting services contracts that comply with Article 2.5 (commencing with Section 10510.4).

(c) (1) Subdivision (a) does not apply to any person, firm, or subsidiary awarded a consulting services contract by a University of California medical center when the provision of service, procurement of goods or supplies, or any other related action required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract, is necessary to avoid a competitive disadvantage in the hospital industry, improve patient care, protect the privacy of patient information, or avoid significant delay and additional expense.

(2) The University of California shall report within 30 days on any exemption granted under paragraph (1) to the Joint Legislative Budget Committee and the Department of Finance. The report shall include a description of the circumstances that warranted the exemption, the effects of the exemption on patient care or patient privacy, and a calculation of the projected costs savings to the institution as a result of the exemption.

SEC. 4. Section 10518 of the Public Contract Code is amended to read:

10518. (a) Except as otherwise provided in subdivision (b), each contractor who enters into a contract with a University of California campus for ten thousand dollars ($10,000) or more shall be assigned an identification number by the chancellor of that university campus. Each

contractor who has been assigned a number shall list it on each contract the contractor enters into with the university campus, regardless of the amount of the contract. In the case of a corporation or firm, the chancellor's assigned number shall be used exclusively on each contract with that particular chancellor's campus. The assigned number shall remain unchanged regardless of future name changes.

(b) If the identification numbers cannot be tracked centrally by the Regents of the University of California, then the regents, and not the chancellors, shall assign the identification numbers.

SEC. 5. Section 10526 is added to the Public Contract Code, to read:

10526. Sections 10522, 10523, 10524, and 10525 of this article do not apply to violations of Article 2.5 (commencing with Section 10510.4) of this chapter.

SEC. 6. Article 7.8 (commencing with Section 10830) is added to Chapter 2.5 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 7.8. Conflict of Interest

10830. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid or be awarded a contract on or after July 1, 2003, for the provision of services, the 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) This section 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.

(c) This section does not apply to consulting services contracts subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

10831. No officer or employee of the California State University shall engage in any employment, activity, or enterprise for 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 California State University department through or by a California State University contract unless the employment, activity, or enterprise is within the course and scope of the officer's or employee's regular California State University employment. No officer or employee in the California State University shall contract on his or her own individual behalf as an independent contractor with any California State University department to provide services or goods. This section shall not apply to

officers or employees of the California State University with teaching or research responsibilities.

10832. (a) No retired, dismissed, separated, or formerly employed person of the California State University employed with the California State University or otherwise appointed to serve in the California State 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 California State 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 California State University employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from the California State University, no person employed in the California State University or otherwise appointed to serve in the California State University may enter into a contract with any California State 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 California State University.

(c) This section does not prohibit the rehire or reappointment of California State University employees after retirement, consistent with California State University administrative policies, nor does it apply to inventors and authors of intellectual property licensed under technology transfer agreements.

10833. (a) Except as otherwise provided in subdivision (b), each contractor who enters into a contract with a California State University campus for ten thousand dollars ($10,000) or more shall be assigned an identification number by the president of that California State University campus. Each contractor who has been assigned a number shall list it on each contract the contractor enters into with the California State University campus, 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 with that president's campus. The assigned number shall remain unchanged regardless of future name changes.

(b) If the identification numbers cannot be tracked centrally by the Trustees of the California State University, then the trustees, and not the presidents, shall assign the identification numbers.

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CHAPTER 700

An act to add Section 1376 to the Penal Code, relating to the death penalty.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 1376 is added to the Penal Code, to read:

1376. (a) As used in this section, ''mentally retarded'' means the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

(b) (1) In any case in which the prosecution seeks the death penalty, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a mental retardation hearing be conducted. Upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to determine whether the defendant is mentally retarded. At the request of the defendant, the court shall conduct the hearing without a jury prior to the commencement of the trial. The defendant's request for a court hearing prior to trial shall constitute a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is mentally retarded. The jury hearing on mental retardation shall occur at the conclusion of the phase of the trial in which the jury has found the defendant guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true. Except as provided in paragraph (3), the same jury shall make a finding that the defendant is mentally retarded, or that the defendant is not mentally retarded.

(2) For the purposes of the procedures set forth in this section, the court or jury shall decide only the question of the defendant's mental retardation. The defendant shall present evidence in support of the claim that he or she is mentally retarded. The prosecution shall present its case regarding the issue of whether the defendant is mentally retarded. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of retardation. Nothing in this section shall prohibit the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is mentally retarded, including, but not limited to, the appointment of, and examination of the defendant

by, qualified experts. No statement made by the defendant during an examination ordered by the court shall be admissible in the trial on the defendant's guilt.

(3) At the close of evidence, the prosecution shall make its final argument, and the defendant shall conclude with his or her final argument. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is mentally retarded. The jury shall return a verdict that either the defendant is mentally retarded or the defendant is not mentally retarded. The verdict of the jury shall be unanimous. In any case in which the jury has been unable to reach a unanimous verdict that the defendant is mentally retarded, and does not reach a unanimous verdict that the defendant is not mentally retarded, the court shall dismiss the jury and order a new jury impaneled to try the issue of mental retardation. The issue of guilt shall not be tried by the new jury.

(c) In the event the hearing is conducted before the court prior to the commencement of the trial, the following shall apply:

(1) If the court finds that the defendant is mentally retarded, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

(2) If the court finds that the defendant is not mentally retarded, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

(d) In the event the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the following shall apply:

(1) If the jury finds that the defendant is mentally retarded, the court shall preclude the death penalty and shall sentence the defendant to confinement in the state prison for life without the possibility of parole.

(2) If the jury finds that the defendant is not mentally retarded, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

(e) In any case in which the defendant has not requested a court hearing as provided in subdivision (b), and has entered a plea of not

guilty by reason of insanity under Sections 190.4 and 1026, the hearing on mental retardation shall occur at the conclusion of the sanity trial if the defendant is found sane.

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 701

An act to amend Section 1091 of the Government Code, relating to public officers.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, ''remote interest'' means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting

party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the ''real or ultimate ownership'' of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

CHAPTER 702

An act to add Chapter 1.5 (commencing with Section 6025) to Part 1 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Chapter 1.5 (commencing with Section 6025) is added to Part 1 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1.5. STREAMLINED SALES TAX PROJECT

6025. This chapter shall be known as and referred to as the ''Streamlined Sales Tax Project.''

6026. For purposes of this act:

(a) ''Agreement'' means the Streamlined Sales and Use Tax Agreement.

(b) ''Board'' means the board of governance, as defined in this act, or the board's designee.

(c) ''Certified automated system'' means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) ''Certified service provider'' means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(e) ''Person'' means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(f) ''Sales tax'' means the tax levied by Chapter 2 (commencing with Section 6051) of Part 1 of Division 2 of the Revenue and Taxation Code.

(g) ''Purchaser'' means a person to whom a sale of tangible personal property is made or to whom a service is provided.

(h) ''Seller'' means any person making sales, leases, or rentals of personal property of services.

(i) ''Sourcing'' means determining the tax situs of a transaction.

(j) ''State'' means any state of the United States and the District of Columbia.

(k) ''Signatory state'' means a state that has entered into the agreement.

(*l*) ''Use tax'' means the tax levied by Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code.

6027. (a) There is created in state government a Board of Governance consisting of two Members of the Senate chosen by the Senate Committee on Rules, one of whom shall belong to the majority party and one of whom shall belong to the minority party, two Members of the Assembly chosen by the Speaker of the Assembly, one of whom shall belong to the majority party and one of whom shall belong to the minority party, one member of the State Board of Equalization, one member of the Franchise Tax Board, and one member of the Governor's Department of Finance.

(b) The board may represent this state in all meetings, limited only to those states that are also authorized by statute to enter into the agreement. The board shall vote on behalf of this state and shall represent the position of this state in all matters relating to the adoption of or amendments to the agreement.

(c) The board shall report quarterly to the Assembly and Senate Revenue and Taxation Committees on the board's progress in negotiating the agreement and shall recommend to the committees the state statutes required to be added, amended, or otherwise modified for purposes of substantially complying with the agreement.

6028. The state's decision to join the Streamlined Sales Tax Project shall not invalidate, amend, or otherwise modify, in whole or in part, any provision of the law of this state. Implementation of any provision of the agreement in this state, whether adopted before, at, or after this state's adoption of the agreement, shall be exclusively done by a separate act or acts of the Legislature.

6029. The board may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(a) The agreement shall set restrictions to limit over time the number of state rates.

(b) The agreement shall establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions.

(2) The administration of exempt sales.

(3) Sales and use tax returns and remittances.

(c) The agreement shall provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(d) The agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory states does not by itself determine whether the seller has nexus with a state for any tax.

(e) The agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local taxes bases.

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

(3) Restricting the frequency of changes in local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(f) The agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement shall allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes or state and local governments under various levels of complexity.

(g) The agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(h) The agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(i) The agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

6030. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

6031. (a) The agreement shall bind and inure only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subdivision (a), no person shall have any cause of action or defense under the agreement or by virtue of this state's decision to join the Streamlined Sales Tax Project. No person may challenge, in any action brought under any provision of law, any action

or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

CHAPTER 703

An act to amend Sections 415, 426, 3001, 3003, 3051, and 3066 of, to add Section 3069.1 to, and to add Article 5 (commencing with Section 3070) to Chapter 6 of Division 2 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 415 of the Vehicle Code is amended to read:

415. (a) A ''motor vehicle'' is a vehicle that is self-propelled.

(b) ''Motor vehicle'' does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle, if operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

(c) For purposes of Chapter 6 (commencing with Section 3000) of Division 2, ''motor vehicle'' includes a recreational vehicle as that term is defined in subdivision (a) of Section 18010 of the Health and Safety Code, but does not include a truck camper.

SEC. 2. Section 426 of the Vehicle Code is amended to read:

426. ''New motor vehicle dealer'' is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new and unregistered off-highway motorcycles from manufacturers or distributors of the vehicles. No distinction shall be made, nor any different construction be given to the definition of ''new motor vehicle dealer'' and ''dealer'' except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2 and Section 11704.5. Sections 3001 and 3003 do not, however, apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

SEC. 3. Section 3001 of the Vehicle Code is amended to read:

3001. (a) Four of the appointive members of the board shall be new motor vehicle dealers as defined in Section 426 who have engaged for a period of not less than five years preceding their appointment in activities regulated by Article 1 (commencing with Section 11700) of Chapter 4 of Division 5. These members shall be appointed by the Governor.

(b) Each of the five remaining appointive members shall be a public member who is not a licentiate under Article 1 (commencing with Section 11700) or 2 (commencing with Section 11800) of Chapter 4 of Division 5 or an employee of such licentiate at the time of appointment and one of these five appointive members shall have been admitted to practice law in the state for at least 10 years immediately preceding his or her appointment. One public member shall be appointed by the Senate Committee on Rules, one by the Speaker of the Assembly, and three by the Governor.

(c) Each member shall be of good moral character.

(d) This section does not apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

SEC. 4. Section 3003 of the Vehicle Code is amended to read:

3003. (a) Each appointive member of the board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his or her successor or until one year has elapsed since the expiration of the time for which he or she was appointed, whichever occurs first.

(b) The terms of the members of the board first appointed shall expire as follows: one public member and one new motor vehicle dealer member, January 15, 1969; two public members and one new motor vehicle dealer member, January 15, 1970; two public members and two new motor vehicle dealer members, January 15, 1971. The terms shall thereupon expire in the same relative order.

(c) Vacancies occurring shall be filled by appointment for the unexpired term.

This section does not apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

SEC. 5. Section 3051 of the Vehicle Code is amended to read:

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesperson under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch, or representative. This chapter does not apply to transactions involving ''mobilehomes,'' as

defined in Section 18008 of the Health and Safety Code, ''recreational vehicles,'' as defined in subdivision (b) of Section 18010 of the Health and Safety Code, truck campers, ''commercial coaches,'' as defined in Section 18001.8 of the Health and Safety Code, or off-highway motor vehicles subject to identification, as defined in Section 38012, except off-highway motorcycles, as defined in Section 436, and all-terrain vehicles, as defined in Section 111. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer, a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

SEC. 6. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in any case involving a franchisee who deals exclusively in motorcycles, the board or its secretary may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, ''good cause'' includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board, or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In any hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065, 3065.1, 3075, or 3076.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, any matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 7. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing may not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, ''good cause'' includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065, 3065.1, 3075, or 3076.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 8. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in any case involving a franchisee who deals exclusively in motorcycles, the board or its secretary may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, ''good cause'' includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board, or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In any hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, 3065.1, 3065.2, 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065, 3065.1, 3075, or 3076.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, any matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 9. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing may not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, ''good cause'' includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, 3065.1, 3065.2, 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065, 3065.1, 3075, or 3076.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 10. Section 3069.1 is added to the Vehicle Code, to read:

3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a franchise authorizing a dealership, as defined in paragraph (1) of subdivision (e) of Section 3072.

SEC. 11. Article 5 (commencing with Section 3070) is added to Chapter 6 of Division 2 of the Vehicle Code, to read:

Article 5. Hearings on Recreational Vehicle Franchise Modification, Replacement, Termination, Refusal to Continue, Establishment, and Relocation, and Consumer Complaints

3070. (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, may not terminate or refuse to continue a franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent may not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the recreational vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the recreational vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(i) To be inserted when a 60-day notice of termination is given:

''NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.''

(ii) To be inserted when a 15-day notice of termination is given:

''NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing

in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.''

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b) (1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of a notice satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

''NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or

replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchiser or your protest rights will be waived.''

3071. In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise of a dealer of new recreational vehicles, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) The amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) The investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) The permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate new recreational vehicle sales and, if required by the franchise, service facilities, equipment, vehicle parts, and qualified service personnel, to reasonably provide for the needs of the consumers of the recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations agreed to be performed by the franchisee in the franchise.

(g) The extent of franchisee's failure to comply with the terms of the franchise.

3072. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same recreational vehicle line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that recreational vehicle line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to establishing or relocating the dealership. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a

hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

''NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant you an additional 10 days to file the protest.''

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

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile of, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and within one-quarter mile of, the location of a dealership of the same recreational vehicle line-make that has been out of operation for less than 90 days.

(3) A display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This paragraph may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code, or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(4) An annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Section 11713.15.

(5) A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle line-make within its relevant market area, if the dealership location subject to the protest was established on or before January 1, 2004.

(c) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(d) For the purposes of this section and Section 3073, a ''motor vehicle dealership'' or ''dealership'' is any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health Safety Code. A ''motor vehicle dealership'' or ''dealership'' does not include a dealer who deals exclusively in truck campers.

3072.5. For the purposes of this article, a ''recreational vehicle line-make'' is a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.

3073. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same recreational vehicle line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) The permanency of the investment.

(b) The effect on the retail recreational vehicle business and the consuming public in the relevant market area.

(c) Whether it is injurious to the public welfare for an additional franchise to be established.

(d) Whether the franchisees of the same recreational vehicle line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. In making this determination, the board shall consider the adequacy of recreational vehicle sales and, if required by the franchise, service facilities, equipment, supply of vehicle parts, and qualified service personnel.

(e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

3074. (a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be

reasonable, with the reasonableness thereof being subject to the approval of the board, providing a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that he or she has fulfilled these obligations.

3075. (a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. A claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3074 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, including,

but not limited to, performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

3076. (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. A claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

3077. (a) In addition to fees imposed under Sections 3016 and 11723, the department shall impose a one-time additional fee on those dealers subject to this article for the issuance or renewal of a license, in an amount determined by the department to be sufficient to cover the costs incurred by the department and the board in the implementation of this article for the first year, or in an amount sufficient to cover costs of not more than three hundred fifty thousand dollars ($350,000), whichever amount is less.

(b) The fee authorized under subdivision (a) may not be imposed on and after January 1, 2005.

(c) All funds derived from the imposition of the fee required under subdivision (a) shall be deposited in the Motor Vehicle Account in the State Transportation Fund and shall be available, upon appropriation, for expenditure to cover the costs incurred by the department and the board in the initial implementation of this article.

3078. (a) If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a motor vehicle dealership, as defined in paragraph (1) of subdivision (e) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

(b) Nothing in this chapter affects a person's rights regarding a transaction involving a recreational vehicle as defined in subdivision (a), to maintain an action under any other statute, including, but not limited to, applicable provisions of Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

3079. This article applies only to a franchise entered into or renewed on or after January 1, 2004.

SEC. 12. (a) Section 7 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by both this bill and AB 1718. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3066 of the Vehicle Code, (3) SB 298 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1718, in which case Sections 6, 8, and 9 of this bill shall not become operative.

(b) Section 8 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by both this bill and SB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3066 of the Vehicle Code, (3) AB 1718 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 298 in which case Sections 6, 7, and 9 of this bill shall not become operative.

(c) Section 9 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by this bill, AB 1718, and SB 298. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 3066 of the Vehicle Code, and (3) this bill is enacted after AB 1718 and SB 298, in which case Sections 6, 7, and 8 of this bill shall not become operative.

CHAPTER 704

An act to amend Section 11362.9 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 11362.9 of the Health and Safety Code is amended to read:

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include

research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(*l*) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or

muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

CHAPTER 705

An act to amend Section 13352.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23542, or to a person described in subdivision (h), instead of suspending that person's license, if the person meets all of the following requirements:

(1) Submits proof of enrollment in, or completion of, a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in paragraph (4) of subdivision (b) of Section 23542.

(2) Submits proof of financial responsibility, as described in Section 16430.

(3) Pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain in effect for the duration of the treatment program described in paragraph (4) of subdivision (b) of Section 23542.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department.

(e) The restriction imposed under this section may be removed when the person presents evidence satisfactory to the department that the person has completed a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit may be given to any program activities completed prior to the date of the current violation.

(f) The department shall immediately terminate the restriction imposed pursuant to this section and shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the treatment program that the person has failed to comply with the program requirements.

(g) Any person restricted pursuant to this section may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352. Whenever proof of financial responsibility has already been provided and a restriction fee has been paid in compliance with restrictions described in this section, and the offender subsequently receives an ignition interlock device restriction described in paragraph (3) of subdivision (a) of Section 13352, the proof of financial responsibility period shall not be

extended beyond the previously established term and no additional restriction fee shall be required.

(h) This section applies to a person who meets all of the following conditions:

(1) Has been convicted of a violation of Section 23152 that occurred on or before July 1, 1999, and is punishable under Section 23540, or former Section 23165.

(2) Was granted probation for the conviction subject to conditions imposed under subdivision (b) of Section 23542, or under subdivision (b) of former Section 23166.

(3) Is no longer subject to the probation described in paragraph (2).

(4) Has not completed the licensed driving-under-the-influence program under paragraph (3) of subdivision (a) of Section 13352 for reinstatement of the driving privilege.

(5) Has no violations in his or her driving record that would preclude issuance of a restricted driver's license.

CHAPTER 706

An act to amend Section 7028 of the Business and Professions Code relating to contractors.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) If the a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, and the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, ''the price of the contract'' for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

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 707

An act to amend Sections 1797.98a, 1797.98b, 1797.98c, and 1797.98e of the Health and Safety Code, relating to health.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) (1) Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The moneys in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its emergency medical services fund administered by the state.

(2) Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund.

(3) All interest earned on moneys in the fund shall be deposited in the fund for disbursement as specified in this section.

(4) Each administering agency may maintain a reserve of up to 15 percent of the amount in the portions of the fund reimbursable to physicians and surgeons, pursuant to subparagraph (A) of, and to hospitals, pursuant to subparagraph (B) of, paragraph (5). Each administering agency may maintain a reserve of any amount in the portion of the fund that is distributed for other emergency medical services purposes as determined by each county, pursuant to subparagraph (C) of paragraph (5).

(5) The amount in the fund, reduced by the amount for administration and the reserve, shall be utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county according to the following schedule:

(A) Fifty-eight percent of the balance of the fund shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized.

(B) Twenty-five percent of the fund shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services.

(C) Seventeen percent of the fund shall be distributed for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. Funding may be used for purchasing equipment and for capital projects only to the extent that these expenditures support the provision of emergency services and are consistent with the intent of this chapter.

(c) The source of the moneys in the fund shall be the penalty assessment made for this purpose, as provided in Section 76000 of the Government Code.

(d) Any physician and surgeon may be reimbursed for up to 50 percent of the amount claimed pursuant to subdivision (a) of Section 1797.98c for the initial cycle of reimbursements made by the administering agency in a given year, pursuant to Section 1797.98e. All funds remaining at the end of the fiscal year in excess of any reserve held and rolled over to the next year pursuant to paragraph (4) of subdivision (b) shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all physicians and surgeons who submitted qualifying claims during that year.

SEC. 2. Section 1797.98b of the Health and Safety Code is amended to read:

1797.98b. (a) Each county establishing a fund, on January 1, 1989, and on each April 15 thereafter, shall report to the Legislature on the implementation and status of the Emergency Medical Services Fund. The report shall cover the preceding fiscal year, and shall include, but not be limited to, all of the following:

(1) The total amount of fines and forfeitures collected, the total amount of penalty assessments collected, and the total amount of penalty assessments deposited into the Emergency Medical Services Fund.

(2) The fund balance and the amount of moneys disbursed under the program to physicians and surgeons, for hospitals, and for other emergency medical services purposes.

(3) The number of claims paid to physicians and surgeons, and the percentage of claims paid, based on the uniform fee schedule, as adopted by the county.

(4) The amount of moneys available to be disbursed to physicians and surgeons, descriptions of the physician and surgeon and hospital claims payment methodologies, the dollar amount of the total allowable claims submitted, and the percentage at which those claims were reimbursed.

(5) A statement of the policies, procedures, and regulatory action taken to implement and run the program under this chapter.

(6) The name of the physician and surgeon and hospital administrator organization, or names of specific physicians and surgeons and hospital administrators, contracted to review claims payment methodologies.

(b) (1) Each county, upon request, shall make available to any member of the public the report required under subdivision (a).

(2) Each county, upon request, shall make available to any member of the public a listing of physicians and surgeons and hospitals that have received reimbursement from the Emergency Medical Services Fund and the amount of the reimbursement they have received. This listing shall be compiled on a semiannual basis.

SEC. 3. Section 1797.98c of the Health and Safety Code is amended to read:

1797.98c. (a) Physicians and surgeons wishing to be reimbursed shall submit their claims for emergency services provided to patients who do not make any payment for services and for whom no responsible third party makes any payment.

(b) If, after receiving payment from the fund, a physician and surgeon is reimbursed by a patient or a responsible third party, the physician and surgeon shall do one of the following:

(1) Notify the administering agency, and, after notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the fund. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician and surgeon shall reimburse the fund in an amount equal to the amount

collected from the patient or third-party payer, but not more than the amount of reimbursement received from the fund.

(2) Notify the administering agency of the payment and reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of the reimbursement received from the fund for that patient's care.

(c) Reimbursement of claims for emergency services provided to patients by any physician and surgeon shall be limited to services provided to a patient who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government, and where all of the following conditions have been met:

(1) The physician and surgeon has inquired if there is a responsible third-party source of payment.

(2) The physician and surgeon has billed for payment of services.

(3) Either of the following:

(A) At least three months have passed from the date the physician and surgeon billed the patient or responsible third party, during which time the physician and surgeon has made two attempts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.

(B) The physician and surgeon has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician and surgeon.

(4) The physician and surgeon has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of moneys from the fund.

(d) A listing of patient names shall accompany a physician and surgeon's submission, and those names shall be given full confidentiality protections by the administering agency.

(e) Notwithstanding any other restriction on reimbursement, a county shall adopt a fee schedule and reimbursement methodology to establish a uniform reasonable level of reimbursement from the county's emergency medical services fund for reimbursable services.

(f) For the purposes of submission and reimbursement of physician and surgeon claims, the administering agency shall adopt and use the current version of the Physicians' Current Procedural Terminology, published by the American Medical Association, or a similar procedural terminology reference.

(g) Each administering agency of a fund under this chapter shall make all reasonable efforts to notify physicians and surgeons who provide, or are likely to provide, emergency services in the county as to the availability of the fund and the process by which to submit a claim against the fund. The administering agency may satisfy this requirement

by sending materials that provide information about the fund and the process to submit a claim against the fund to local medical societies, hospitals, emergency rooms, or other organizations, including materials that are prepared to be posted in visible locations.

SEC. 4. Section 1797.98e of the Health and Safety Code is amended to read:

1797.98e. (a) It is the intent of the Legislature that a simplified, cost-efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall select an administering officer and shall establish procedures and time schedules for the submission and processing of proposed reimbursement requests submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency Medical Services Fund on at least a quarterly basis to applicants who have submitted accurate and complete data for payment. When the administering agency determines that claims for payment for physician and surgeon services are of sufficient numbers and amounts that, if paid, the claims would exceed the total amount of funds available for payment, the administering agency shall fairly prorate, without preference, payments to each claimant at a level less than the maximum payment level. Each administering agency may encumber sufficient funds during one fiscal year to reimburse claimants for losses incurred during that fiscal year for which claims will not be received until after the fiscal year. The administering agency may, as necessary, request records and documentation to support the amounts of reimbursement requested by physicians and surgeons and the administering agency may review and audit the records for accuracy. Reimbursements requested and reimbursements made that are not supported by records may be denied to, and recouped from, physicians and surgeons. Physicians and surgeons found to submit requests for reimbursement that are inaccurate or unsupported by records may be excluded from submitting future requests for reimbursement. The administering officer shall not give preferential treatment to any facility, physician and surgeon, or category of physician and surgeon and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician and surgeon with which the administering officer has an operational or financial relationship. A hospital administrator of a hospital owned or operated by a county of a population of 250,000 or more as of January 1, 1991, or a person under the direct supervision of that person, shall not be the administering officer. The board of supervisors of a county or any other county agency may serve as the administering officer. The administering officer shall solicit input from physicians and surgeons and hospitals to review payment distribution

methodologies to ensure fair and timely payments. This requirement may be fulfilled through the establishment of an advisory committee with representatives comprised of local physicians and surgeons and hospital administrators. In order to reduce the county's administrative burden, the administering officer may instead request an existing board, commission, or local medical society, or physicians and surgeons and hospital administrators, representative of the local community, to provide input and make recommendations on payment distribution methodologies.

(b) Each provider of health services that receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the administering agency may, by regulation, require, for a period of three years from the date the service was provided. The administering agency shall not require any additional information from a physician and surgeon providing emergency medical services that is not available in the patient record maintained by the entity listed in subdivision (f) where the medical services are provided, nor shall the administering agency require a physician and surgeon to make eligibility determinations.

(c) During normal working hours, the administering agency may make any inspection and examination of a hospital's or physician and surgeon's books and records needed to carry out the provisions of this chapter. A provider who has knowingly submitted a false request for reimbursement shall be guilty of civil fraud.

(d) Nothing in this chapter shall prevent a physician and surgeon from utilizing an agent who furnishes billing and collection services to the physician and surgeon to submit claims or receive payment for claims.

(e) All payments from the fund pursuant to Section 1797.98c to physicians and surgeons shall be limited to physicians and surgeons who, in person, provide onsite services in a clinical setting, including, but not limited to, radiology and pathology settings.

(f) All payments from the fund shall be limited to claims for care rendered by physicians and surgeons to patients who are initially medically screened, evaluated, treated, or stabilized in any of the following:

(1) A basic or comprehensive emergency department of a licensed general acute care hospital.

(2) A site that was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients.

(3) A standby emergency department that was in existence on January 1, 1989, in a hospital specified in Section 124840.

(4) For the 1991–92 fiscal year and each fiscal year thereafter, a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services.

(g) Payments shall be made only for emergency services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(h) Notwithstanding subdivision (g), if it is necessary to transfer the patient to a second facility providing a higher level of care for the treatment of the emergency condition, reimbursement shall be available for services provided at the facility to which the patient was transferred on the calendar day of transfer and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(i) Payment shall be made for medical screening examinations required by law to determine whether an emergency condition exists, notwithstanding the determination after the examination that a medical emergency does not exist. Payment shall not be denied solely because a patient was not admitted to an acute care facility. Payment shall be made for services to an inpatient only when the inpatient has been admitted to a hospital from an entity specified in subdivision (f).

(j) The administering agency shall compile a quarterly and yearend summary of reimbursements paid to facilities and physicians and surgeons. The summary shall include, but shall not be limited to, the total number of claims submitted by physicians and surgeons in aggregate from each facility and the amount paid to each physician and surgeon. The administering agency shall provide copies of the summary and forms and instructions relating to making claims for reimbursement to the public, and may charge a fee not to exceed the reasonable costs of duplication.

(k) Each county shall establish an equitable and efficient mechanism for resolving disputes relating to claims for reimbursements from the fund. The mechanism shall include a requirement that disputes be submitted either to binding arbitration conducted pursuant to arbitration procedures set forth in Chapter 3 (commencing with Section 1282) and Chapter 4 (commencing with Section 1285) of Part 3 of Title 9 of the Code of Civil Procedure, or to a local medical society for resolution by neutral parties.

CHAPTER 708

An act to add Chapter 9.7 (commencing with Section 6267) to Title 7 of Part 3 of the Penal Code, relating to inmates.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

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

(a) By law, all prisoners have the right to adequate and appropriate medical and psychiatric care.

(b) A number of prisoners remain on waiting lists for appropriate medical and psychiatric care.

(c) It is estimated that the Department of Corrections has over 5,000 geriatric inmates in custody with special security and needs.

(d) California will soon confront a major demographic shift in its correctional system due to the large number of prisoners currently in or entering middle age. The demographic shift will sharply change the operational demands of the system's facilities and staff as well as contribute to a sharp increase in per capita prisoner costs.

(e) The Legislative Analyst's Office projects that the over-55 prison population will approach 30,000 20 years from now, growing at a rate faster than the prison population as a whole. As these prisoners enter old age, the system will experience ballooning hidden costs and systemic problems associated with the aging process.

(f) California can reduce costs while improving care for prisoners by making logical, risk-sensitive reforms. As the number of geriatric prisoners increases, a properly managed and centralized system can reduce costs with the greater efficiency of buying and dispensing services in bulk. This will bring down the higher per capita costs of geriatric prisoners and thus, the total expenditure for the state.

(g) Geriatric prisoners and prisoners with disabilities often require special care and attention within the prison system. In addition to difficulties in mobility and interaction, geriatric prisoners and prisoners with disabilities can be targets of abuse by younger prisoners. Geriatric prisoners and prisoners with disabilities make ideal targets for theft, extortion, and even sexual assault.

(h) Other states indicate that specialized geriatric units dramatically reduce the costs of this category of geriatric prisoners while significantly improving the level of care. For geriatric prisoners, those units are in great demand, and facilities like Virginia's Staunton prison and North Carolina's McCain facility have long waiting lists of requested transfers. Geriatric prisoners in specialized geriatric units also live in an environment where staff members are familiar with their medical, cognitive, and mobility problems.

(i) Several class action lawsuits have been filed against the state in cases involving prisoners who were denied access to appropriate medical care and psychiatric services, based on long waiting lists.

(j) To address this problem, it is in the best interest of the state to contract for skilled nursing facilities for the care of inmates with long-term care needs, thereby lessening the burden on the prison medical care system. Skilled nursing facilities provide long-term care services in a more specialized, efficient manner, thereby saving medical care and psychiatric care beds for other prisoners with acute care or psychiatric care needs.

SEC. 2. Chapter 9.7 (commencing with Section 6267) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 9.7. SPECIAL FACILITIES

6267. (a) (1) The Legislature finds and declares that the purpose of the program authorized under this section is to address the special needs of inmates with regard to the provision of long-term care in skilled nursing facilities.

(2) The department may contract with public or private entities for the establishment and operation of skilled nursing facilities for the incarceration and care of inmates who are limited in ability to perform activities of daily living and who are in need of skilled nursing services. The skilled nursing facility under contract pursuant to this section shall address the long-term care of inmates as needed. In addition, the facility shall be designed to maximize the personal security of inmates, to maximize the security of the facility, and to ensure the safety of the outside community at large.

(b) The department shall provide for the security of the facility in order to ensure the safety of the outside community at large.

(c) The department shall enter into an agreement for transfer of prisoners to, or placement of prisoners in, skilled nursing facilities pursuant to this section.

(d) The facility contractor shall ensure that the facility meets all licensing requirements by obtaining a license for the skilled nursing facility, as that term is defined in Section 1250 of the Health and Safety Code.

(e) The department shall provide for the review of any agreement entered into under this section to determine if the facility contractor is in compliance with the requirements of this section, and may revoke the agreement if the facility contractor is not in compliance.

(f) The Department of Corrections ombudsman program shall provide ombudsman services to prisoner residents of the department-contracted skilled nursing facilities.

(g) Notwithstanding the provisions of Chapter 11 (commencing with Section 9700) of Division 8.5 of the Welfare and Institutions Code, the Office of the State Long-Term Care Ombudsman shall be exempt from advocating on behalf of, or investigating complaints on behalf of residents of any skilled nursing facilities operated either directly or by contract by the Department of Corrections.

(h) As used in this section, ''long-term care'' means personal or supportive care services provided to people of all ages with physical or mental disabilities who need assistance with activities of daily living including bathing, eating, dressing, toileting, transferring, and ambulation.

CHAPTER 709

An act to amend Sections 7251.1, 7285, and 7285.5 of, to add Chapter 2.3 (commencing with Section 7285.9) to Part 1.7 of Division 2 of, and to repeal Sections 7251.3 and 7251.4 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 7251.1 of the Revenue and Taxation Code is amended to read:

7251.1. The combined rate of all taxes imposed in accordance with this part in any county may not exceed 2 percent. No tax shall be considered to be in accordance with this part if, upon its adoption, the combined rate in the county will exceed 2 percent.

SEC. 2. Section 7251.3 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 7251.4 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 7285 of the Revenue and Taxation Code is amended to read:

7285. The board of supervisors of any county may levy, increase, or extend a transactions and use tax for general purposes at a rate of 0.25 percent or a multiple thereof, if the ordinance proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the county voting in an election on the issue. The board of supervisors may levy, increase, or extend more than one transaction and use tax under this

section, if the adoption of each tax is in the manner prescribed in this section. The transactions and use tax shall conform to Part 1.6 (commencing with Section 7251).

SEC. 5. Section 7285.5 of the Revenue and Taxation Code is amended to read:

7285.5. As an alternative to the procedure set forth in Section 7285, the board of supervisors of any county may levy, increase, or extend a transactions and use tax for specific purposes. The tax may be levied, increased, or extended at a rate of 0.25 percent, or a multiple thereof, for the purpose for which it is established, if all of the following requirements are met:

(a) The ordinance proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and is subsequently approved by a two-thirds vote of the qualified voters of the county voting in an election on the issue.

(b) The transactions and use tax conforms to the Transactions and Use Tax Law Part 1.6 (commencing with Section 7251).

(c) The ordinance includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended.

SEC. 6. Chapter 2.3 (commencing with Section 7285.9) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.3. CITIES TRANSACTIONS AND USE TAXES

7285.9. The governing body of any city may levy, increase, or extend a transactions and use tax for general purposes at a rate of 0.25 percent or a multiple thereof, if the ordinance proposing that tax is approved by a two-thirds vote of all members of that governing body and the tax is approved by a majority vote of the qualified voters of the city voting in an election on the issue. The governing body may levy, increase, or extend more than one transaction and use tax under this section, if the adoption of each tax is in the manner prescribed in this section. The transactions and use tax shall conform to Part 1.6 (commencing with Section 7251).

7285.91. As an alternative to the procedure set forth in Section 7285.9, the governing body of any city may levy, increase, or extend a transactions and use tax for specific purposes. The tax may be levied, increased, or extended at a rate of 0.25 percent, or a multiple thereof, for the purpose for which it is established, if all of the following requirements are met:

(a) The ordinance proposing that tax is approved by a two-thirds vote of all members of the governing body and is subsequently approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) The transactions and use tax conforms to the Transactions and Use Tax Law Part 1.6 (commencing with Section 7251).

(c) The ordinance includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended.

7285.92. The authority of a city to impose transactions and use taxes under this chapter is in addition to any authority to impose these taxes contained in Chapters 2.6 (commencing with Section 7286.20) to 2.99 (commencing with Section 7286.80), inclusive, of this part. The authority of a city to impose transactions and use taxes under any provision of law is subject to the rate limitation specified in Section 7251.1.

CHAPTER 710

An act to amend Sections 24011 and 25502.3 of the Government Code, to amend Section 830.1 of the Penal Code, and to amend Section 16809.4 of the Welfare and Institutions Code, relating to local government.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 24011 of the Government Code is amended to read:

24011. Notwithstanding the provisions of Section 24009:

(a) The Boards of Supervisors of Glenn County, Madera County, Mendocino County, Napa County, Solano County, Trinity County, Tuolumne County, and Lake County may, by ordinance, provide that the public administrator shall be appointed by the board.

(b) The Boards of Supervisors of Madera County, Mendocino County, Napa County, Trinity County, Tuolumne County, and Lake County may appoint the same person to the offices of public administrator, veteran service officer, and public guardian. The Board of Supervisors of Glenn County and Solano County may, by ordinance, appoint the same person to the offices of public administrator and public guardian.

(c) The Boards of Supervisors of Glenn County, Madera County, Mendocino County, Napa County, Trinity County, Tuolumne County, and Lake County may separate the consolidated offices of district attorney and public administrator at any time in order to make the appointments permitted by this section. Upon approval by the board of

supervisors, the officer elected to these offices at any time may resign, or decline to qualify for, the office of public administrator without resigning from, or declining to qualify for, the office of district attorney.

SEC. 2. Section 25502.3 of the Government Code is amended to read:

25502.3. In counties having a population of less than 200,000, the board of supervisors may authorize the purchasing agent to engage independent contractors to perform services for the county or county officers, with or without the furnishing of material, when the aggregate cost does not exceed fifty thousand dollars ($50,000), except that this amount shall be adjusted annually by any annual increase in the California Price Index as determined pursuant to Section 2212 of the Revenue and Taxation Code.

SEC. 3. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or county, any port warden or port police officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The

authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Kern, Humboldt, Imperial, Mendocino, Plumas, Riverside, San Diego, Santa Barbara, Shasta, Siskiyou, Solano, Sonoma, Sutter, and Tehama who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

SEC. 4. 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 (5).

(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, including meetings held pursuant to subdivision (*l*), except 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.

(i) (1) 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:

(A) Provide prior public notice of those meetings.

(B) Provide that notice not less than 30 days prior to those meetings.

(C) Publish that notice in a newspaper of general circulation in each participating CMSP county.

(D) Include in the notice, at a minimum, the amount and type of each proposed change, the expected savings, and the number of persons affected.

(E) Hold those meetings in the county seats of at least four regionally distributed CMSP participating counties.

(F) 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.

(2) From January 1, 2004, to July 1, 2005, inclusive, the requirements for public meetings pursuant to this subdivision to eliminate or reduce the level of services, or to restrict the eligibility for services, are satisfied if at least three voting members of the governing board hold the meetings as required and report the testimony from those meetings to the full board at its next regular meeting. No action shall be taken at any action held pursuant to this subdivision.

(j) 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).

(k) 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.

(*l*) Any references to the ''County Medical Services Program'' or ''CMSP county'' in this code shall be defined as set forth in this section.

(m) 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.

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CHAPTER 711

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. The Legislature finds and declares:

(a) The State of California spends millions in public funds on garments, uniforms, materials, and supplies provided or laundered by private bidders, vendors, and contractors.

(b) The state recognizes a public interest in avoiding subsidies to bidders and contractors whose workplaces represent sweatshop conditions, including violation of recognized standards of wages, workplace health and safety, child labor, nondiscrimination and nonharrassment, and the rights of workers to assemble and choose to bargain collectively.

(c) Thousands of workers are employed in sweatshop conditions in the State of California, and southern California has been identified as the sweatshop capital of the United States.

(d) The state recognizes the rights of its citizens to information and choice with regard to the expenditure of its tax dollars.

(e) The state has an interest in providing incentives for responsible bidders.

(f) The state shall establish a ''sweat-free'' procurement policy and code of conduct that ensures that apparel, garments and corresponding accessories, equipment, materials, and supplies purchased by the state, its agencies, or its employees through contracts, purchase orders, or uniform allowances or voucher programs, be produced in workplaces free of sweatshop conditions.

SEC. 2. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor,

forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(e) (1) For purposes of this section, the term ''forced labor'' shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) ''Abusive forms of child labor'' means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) ''Exploitation of children in sweatshop labor'' means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) ''Sweatshop labor'' means all work or service extracted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) ''Apparel, garments or corresponding accessories'' includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, ''forced labor'' and ''convict labor'' do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) ''State agency'' means any state agency in this state.

(f) (1) On or before February 1, 2004, the Department of Industrial Relations shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments and corresponding accessories may be permitted a phasein period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phasein goals and timetables of up to three years in order to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is

neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.

(5) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their subcontractors comply with the appropriate laws of countries where the facilities are located.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a

public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors must comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal harrassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(h) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(i) The provisions of this section, as amended by the act adding this subdivision, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions 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 712

An act to repeal and add Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Because the state has reinstated a sales tax on bunker fuel, the amount of petroleum coke produced in California will increase substantially. Several million dollars that had annually been used to purchase millions of gallons of bunker fuel in California will instead be invested in other states and nations along the west coast of North America.

(b) Adding a sales tax to bunker fuels has a demonstrable negative effect on California's trade industry and sectors of the economy that rely on trade. Similarly, increasing taxes on bunker fuel results in environmental and health repercussions.

(c) Petroleum coke is a dry, dusty, residual product created during the final stages of the oil refining process. It is used as an alternative energy source in many poor countries. After petroleum is refined for automobile fuel, truck fuel, and jet fuel, it is further refined into a lower grade fuel used primarily for kerosene and bunker fuel. Unused bunker fuel is further refined into petroleum coke.

(d) Samples of petroleum coke dust have turned up high levels of the potentially carcinogenic chemicals chrysense and vanadium. When airborne, petroleum coke can travel alone or attach to other harmful particulate matter such as diesel fuel. Although various storage techniques can limit airborne movement of petroleum coke dust, most movement occurs when the dust is moved by truck.

SEC. 2. Section 6385 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 6385 is added to the Revenue and Taxation Code, to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the

certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) ''First out-of-state destination,'' as used in this section, means the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged. ''First out-of-state destination,'' as used in this section, also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

(e) ''Common carrier,'' as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(f) ''Foreign air carrier,'' as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(g) ''Immediate shipment,'' as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) Any common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller's permit shall be required to register with the board and obtain a fuel exemption registration number and shall be required to file returns as the board may prescribe if either the board notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable

provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(*l*) On December 31, 2005, the Legislative Analyst's Office (LAO) shall submit a report to the Governor and the Legislature that evaluates the economic impact of the partial sales tax exemption regarding bunker fuel.

(m) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

SEC. 4. Section 6385 is added to the Revenue and Taxation Code, to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business

as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, an air waybill, or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) ''Common carrier,'' as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) ''Foreign air carrier,'' as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2014.

SEC. 5. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 713

An act to amend Section 1367 of, and to add Sections 1367.04 and 1367.07 to, the Health and Safety Code, and to add Sections 10133.8 and 10133.9 to the Insurance Code, relating to health care coverage.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 1367 of the Health and Safety Code is amended to read:

1367. A health care service plan and, if applicable, a specialized health care service plan shall meet the following requirements:

(a) Facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) Personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) Equipment required to be licensed or registered by law shall be so licensed or registered, and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to each enrollee consistent with good professional practice. To the extent feasible, the plan shall make all services readily accessible to all enrollees consistent with Section 1367.03.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 28 of the California Code of Regulations.

(3) The plan shall make all services accessible and appropriate consistent with Section 1367.04.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) (1) Contracts with subscribers and enrollees, including group contracts, and contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(2) A health care service plan shall ensure that a dispute resolution mechanism is accessible to noncontracting providers for the purpose of resolving billing and claims disputes.

(3) On and after January 1, 2002, a health care service plan shall annually submit a report to the department regarding its dispute resolution mechanism. The report shall include information on the number of providers who utilized the dispute resolution mechanism and a summary of the disposition of those disputes.

(i) A health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service that health care service plans are required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) A health care service plan shall not require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

The obligation of the plan to comply with this section shall not be waived when the plan delegates any services that it is required to perform to its medical groups, independent practice associations, or other contracting entities.

SEC. 2. Section 1367.04 is added to the Health and Safety Code, to read:

1367.04. (a) Not later than January 1, 2006, the department shall develop and adopt regulations establishing standards and requirements to provide health care service plan enrollees with appropriate access to language assistance in obtaining health care services.

(b) In developing the regulations, the department shall require every health care service plan and specialized health care service plan to assess the linguistic needs of the enrollee population, excluding Medi-Cal enrollees, and to provide for translation and interpretation for medical services, as indicated. A health care service plan that participates in the Healthy Families Program may assess the Healthy Families Program enrollee population separately from the remainder of its enrollee population for purposes of subparagraph (A) of paragraph (1). A health care service plan that chooses to separate its Healthy Families Program enrollment from the remainder of its enrollee population shall treat the Healthy Families Program population separately for purposes of determining whether subparagraph (A) of paragraph (1) is applicable, and shall also treat the Healthy Families Program population separately for purposes of applying the percentage and numerical thresholds in subparagraph (A) of paragraph (1). The regulations shall include the following:

(1) Requirements for the translation of vital documents that include the following:

(A) A requirement that all vital documents, as defined pursuant to subparagraph (B), be translated into an indicated language, as follows:

(i) A health care service plan with an enrollment of 1,000,000 or more shall translate vital documents into the top two languages other than English as determined by the needs assessment as required by this subdivision and any additional languages when 0.75 percent or 15,000 of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(ii) A health care service plan with an enrollment of 300,000 or more but less than 1,000,000 shall translate vital documents into the top one language other than English as determined by the needs assessment as required by this subdivision and any additional languages when 1 percent or 6,000 of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(iii) A health care service plan with an enrollment of less than 300,000 shall translate vital documents into a language other than English when 3,000 or more or five percent of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(B) Specification of vital documents produced by the plan that are required to be translated. The specification of vital documents shall not exceed that of the Department of Health and Human Services (FIHS) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)), but shall include all of the following:

(i) Applications.

(ii) Consent forms.

(iii) Letters containing important information regarding eligibility and participation criteria.

(iv) Notices pertaining to the denial, reduction, modification, or termination of services and benefits, and the right to file a grievance or appeal.

(v) Notices advising limited-English-proficient persons of the availability of free language assistance and other outreach materials that are provided to enrollees.

(vi) Translated documents shall not include a health care service plan's explanation of benefits or similar claim processing information that is sent to enrollees, unless the document requires a response by the enrollee.

(C) (i) For those documents described in subparagraph (B) that are not standardized but contain enrollee specific information, health care service plans shall not be required to translate the documents into the threshold languages identified by the needs assessment as required by this subdivision, but rather shall include with the documents a written notice of the availability of interpretation services in the threshold languages identified by the needs assessment as required by this subdivision.

(ii) Upon request, the enrollee shall receive a written translation of the documents described in clause (i). The health care service plan shall have

up to, but not to exceed, 21 days to comply with the enrollee's request for a written translation. If an enrollee requests a translated document, all timeframes and deadline requirements related to the document that apply to the health care service plan and enrollees under the provisions of this chapter and under any regulations adopted pursuant to this chapter shall begin to run upon the health care service plan's issuance of the translated document.

(iii) For grievances that require expedited plan review and response in accordance with subdivision (b) of Section 1368.01, the health care service plan may satisfy this requirement by providing notice of the availability and access to oral interpretation services.

(D) A requirement that health care service plans advise limited-English-proficient enrollees of the availability of interpreter services.

(2) Standards to ensure the quality and accuracy of the written translations and that a translated document meets the same standards required for the English language version of the document. The English language documents shall determine the rights and obligations of the parties, and the translated documents shall be admissible in evidence only if there is a dispute regarding a substantial difference in the material terms and conditions of the English language document and the translated document.

(3) Requirements for surveying the language preferences and needs assessments of health care service plan enrollees within one year of the effective date of the regulations that permit health care service plans to utilize various survey methods, including, but not limited to, the use of existing enrollment and renewal processes, subscriber newsletters, or other mailings. Health care service plans shall update the needs assessment, demographic profile, and language translation requirements every three years.

(3) Requirements for individual enrollee access to interpretation services.

(4) Standards to ensure the quality and timeliness of oral interpretation services provided by health care service plans.

(c) In developing the regulations, standards, and requirements, the department shall consider the following:

(1) Publications and standards issued by federal agencies, such as the Culturally and Linguistically Appropriate Services (CLAS) in Health Care issued by the United States Department of Health and Human Services Office of Minority Health in December 2000, and the Department of Health and Human Services (FIHS) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)).

(2) Other cultural and linguistic requirements under state programs, such as Medi-Cal Managed Care Policy Letters, cultural and linguistic requirements imposed by the State Department of Health Services on health care service plans that contract to provide Medi-Cal managed care services, and cultural and linguistic requirements imposed by the Managed Risk Medical Insurance Board on health care service plans that contract to provide services in the Healthy Families Program.

(3) Standards adopted by other states pertaining to language assistance requirements for health care service plans.

(4) Standards established by California or nationally recognized accrediting, certifying, or licensing organizations and medical and health care interpreter professional associations regarding interpretation services.

(5) Publications, guidelines, reports, and recommendations issued by state agencies or advisory committees, such as the report card to the public on the comparative performance of plans and reports on cultural and linguistic services issued by the Office of Patient Advocate and the report to the Legislature from the Task Force on Culturally and Linguistically Competent Physicians and Dentists established by Section 852 of the Business and Professions Code.

(6) Examples of best practices relating to language assistance services by health care providers and health care service plans, including existing practices.

(7) Information gathered from complaints to the HMO Helpline and consumer assistance centers regarding language assistance services.

(8) The cost of compliance and the availability of translation and interpretation services and professionals.

(9) Flexibility to accommodate variations in plan networks and method of service delivery. The department shall allow for health care service plan flexibility in determining compliance with the standards for oral and written interpretation services.

(d) The department shall work to ensure that the biennial reports required by this section, and the data collected for those reports, are consistent with reports required by government-sponsored programs and do not require duplicative or conflicting data collection or reporting.

(e) The department shall seek public input from a wide range of interested parties through the Advisory Committee on Managed Health Care or other advisory bodies established by the director.

(f) A contract between a health care service plan and a health care provider shall require compliance with the standards developed under this section. In furtherance of this section, the contract shall require providers to cooperate with the plan by providing any information necessary to assess compliance.

(g) The department shall report biennially to the Legislature and the Advisory Committee on Managed Health Care, or other advisory bodies established by the director, regarding plan compliance with the standards, including results of compliance audits made in conjunction with other audits and reviews. The reported information shall also be included in the publication required under subparagraph (B) of paragraph (3) of subdivision (c) of Section 1368.02. The department shall also utilize the reported information to make recommendations for changes that further enhance standards pursuant to this section. The department may also delay or otherwise phase in implementation of standards and requirements in recognition of costs and availability of translation and interpretation services and professionals.

(h) (1) Except for contracts with the State Department of Health Services Medi-Cal program, the standards developed under this section shall be considered the minimum required for compliance.

(2) The regulations shall provide that a health plan is in compliance if the plan is required to meet the same or similar standards by the Medi-Cal program, either by contract or state law, if the standards provide as much access to cultural and linguistic services as the standards established by this section for an equal or higher number of enrollees and therefore meet or exceed the standards of the regulations established pursuant to this section, and the department determines that the health care service plan is in compliance with the standards required by the Medi-Cal program. To meet this requirement, the department shall not be required to perform individual audits. The department shall, to the extent feasible, rely on audits, reports or other oversight and enforcement methods used by the State Department of Health Services.

(3) The determination pursuant to paragraph (2) shall only apply to the enrollees covered by the Medi-Cal program standards. A health care service plan subject to paragraph (2) shall comply with the standards established by this section with regard to enrollees not covered by the Medi-Cal program.

(j) Nothing in this section shall prohibit a government purchaser from including in their contracts additional translation or interpretation requirements, to meet linguistic or cultural needs, beyond those set forth pursuant to this section.

SEC. 3. Section 1367.07 is added to the Health and Safety Code, to read:

1367.07. Within one year after a health care service plan's assessment pursuant to subdivision (b) of Section 1367.06, the health care service plan shall report to the department, in a format specified by the department, regarding internal policies and procedures related to cultural appropriateness in each of the following contexts:

(a) Collection of data regarding the enrollee population pursuant to the health care service plan's assessment conducted in accordance with subdivision (b) of Section 1367.06.

(b) Education of health care service plan staff who have routine contact with enrollees regarding the diverse needs of the enrollee population.

(c) Recruitment and retention efforts that encourage workforce diversity.

(d) Evaluation of the health care service plan's programs and services with respect to the plan's enrollee population, using processes such as an analysis of complaints and satisfaction survey results.

(e) The periodic provision of information regarding the ethnic diversity of the plan's enrollee population and any related strategies to plan providers. Plans may use existing means of communication.

(f) The periodic provision of educational information to plan enrollees on the plan's services and programs. Plans may use existing means of communications.

SEC. 4. Section 10133.8 is added to the Insurance Code, to read:

10133.8. (a) The commissioner shall, on or before January 1, 2006, promulgate regulations applicable to all individual and group policies of health insurance establishing standards and requirements to provide insureds with appropriate access to translated materials and language assistance in obtaining covered benefits. A health insurer that participates in the Healthy Families Program may assess the Health Families Program enrollee population separately from the remainder of its population for purposes of subparagraph (A) of paragraph (3) of subdivision (b). An insurer that chooses to separate its Healthy Families Program enrollment from the remainder of its population shall treat the Healthy Families Program population separately for purposes of determining whether subparagraph (A) of paragraph (3) of subdivision (b) is applicable and shall also treat the Healthy Families Program population separately for purposes of applying the percentage and numerical thresholds in subparagraph (A) of paragraph (3) of subdivision (b).

(b) The regulations described in subdivision (a) shall include the following:

(1) A requirement to conduct an assessment of the needs of the insured group, pursuant to this subdivision.

(2) Requirements for surveying the language preferences and assessment of linguistic needs of insureds within one year of the effective date of the regulations that permit health insurers to utilize various survey methods, including, but not limited to, the use of existing enrollment and renewal processes, newsletters, or other mailings. Health insurers shall update the linguistic needs assessment, demographic

profile, and language translation requirements every three years. However, the regulations may provide that the surveys and assessments by insurers of supplemental insurance products may be conducted less frequently than three years if the commissioner determines that the results are unlikely to effect the translation requirements.

(3) Requirements for the translation of vital documents that include the following:

(A) A requirement that all vital documents, as defined pursuant to subparagraph B be translated into an indicated language, as follows:

(i) A health insurer with an insured population of 1,000,000 or more shall translate vital documents into the top two languages other than English as determined by the needs assessment pursuant to paragraph (2) of subdivision (b) and any additional languages when 0.75 percent or 15,000 of the insured population, whichever, number is less, indicates in the needs assessment pursuant to paragraph (2) of subdivision (b) a preference for written materials in that language.

(ii) A health insurer with an insured population of 300,000 or more but less than 1,000,000 shall translate vital documents into the top one language other than English as determined by the needs assessment pursuant to paragraph (2) of subdivision (b) and any additional languages when 1 percent or 6,000 of the insured population, whichever number is less, indicates in the needs assessment pursuant to paragraph (2) of subdivision (b) a preference for written materials in that language.

(iii) A health insurer with an insured population of less than 300,000 shall translate vital documents into a language other than English when 3,000 or more or five percent of the insured population, whichever number is less, indicates in the needs assessment pursuant to paragraph (2) of subdivision (b) a preference for written materials in that language.

(B) Specification of vital documents produced by the insurer that are required to be translated. The specification of vital documents shall not exceed that of the Department of Health and Human Services (FIHS) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)), but shall include all of the following:

(i) Applications.

(ii) Consent forms.

(iii) Letters containing important information regarding eligibility or participation criteria.

(iv) Notices pertaining to the denial, reduction, modification or termination of services and benefits, the right to file a complaint or appeal.

(v) Notices advising Limited English proficient persons of the availability of free language assistance and other outreach materials that are provided to insureds.

(vi) Translated documents shall not include an insurer's explanation of benefits or similar claim processing information that are sent to insureds unless, the document requires a response by the insured.

(C) For those documents described in subparagraph (B) that are not standardized but contain insured specific information, health insurers shall not be required to translate the documents into the threshold languages identified by the needs assessment pursuant to paragraph (2) of subdivision (b) but rather shall include with the document a written notice of the availability of interpretation services in the threshold languages identified by the needs assessment pursuant to paragraph (2) of subdivision (b).

(i) Upon request, the insured shall receive a written translation of those documents. The health insurer shall have up to, but not to exceed 21 days to comply with the insured's request for a written translation. If an enrollee requests a translated document, all timeframes and deadlines requirements related to the documents that apply to the health insurer and insureds under the provisions of this chapter and under any regulations adopted pursuant to this chapter shall begin to run upon the health insurer's issuance of the translated document.

(ii) For appeals that require expedited review and response in accordance with the statutes and regulations of this chapter. The health insurer may satisfy this requirement by providing notice of the availability and access to oral interpretation services.

(D) A requirement that health insurers advise Limited English proficient insureds of the availability of interpreter services.

(4) Standards to ensure the quality and accuracy of the written translation and that a translated document meets the same standards required for the English version of the document. The English language documents shall determine the rights and obligations of the parties, and the translated documents shall be admissible in evidence only if there is a dispute regarding a substantial difference in the material terms and conditions of the English language document and the translated document.

(5) Requirements for individual access to interpretation services.

(6) Standards to ensure the quality and timeliness of oral interpretation services provided by health insurers.

(c) In developing the regulations, standards, and requirements described in this section, the commissioner shall consider the following:

(1) Publications and standards issued by federal agencies, including the Culturally and Linguistically Appropriate Services (CLAS) in Health Care issued by the United States Department of Health and Human Services Office of Minority Health in December 2000, and the Department of Health and Human Services (FIHS) Office of Civil

Rights (OCR) Policy Guidance 65 (65 Federal Register 52762 (August 30, 2000)).

(2) Other cultural and linguistic requirements under state programs, including the Medi-Cal Managed Care Policy Letters, cultural and linguistic requirements imposed by the State Department of Health Services on health care service plans that contract to provide Medi-Cal managed care services, and cultural and linguistic requirements imposed by the Managed Risk Medical Insurance Board on health insurers that contract to provide services in the Healthy Families Program.

(3) Standards adopted by other states pertaining to language assistance requirements for health insurers.

(4) Standards established by California or nationally recognized accrediting, certifying, or licensing organizations and medical and health care interpreter professional associations regarding interpretation services.

(5) Publications, guidelines, reports, and recommendations issued by state agencies or advisory committees, such as the report card to the public on the comparative performance of plans and reports on cultural and linguistic services issued by the Office of Patient Advocate and the report to the Legislature from the Task Force on Culturally and Linguistically Competent Physicians and Dentists required pursuant to Section 852 of the Business and Professions Code.

(6) Examples of best practices relating to language assistance services by health care providers and health insurers that contract for alternative rates of payment with providers, including existing practices.

(7) Information gathered from complaints to the commissioner and consumer assistance help lines regarding language assistance services.

(8) The cost of compliance and the availability of translation and interpretation services and professionals.

(9) Flexibility to accommodate variations in networks and method of service delivery. The commissioner shall allow for health insurer flexibility in determining compliance with the standards for oral and written interpretation services.

(d) In designing the regulations, the commissioner shall consider all other relevant guidelines in an effort to accomplish maximum accessibility within a cost-efficient system of indemnification. The commissioner shall seek public input from a wide range of interested parties.

(e) Services, verbal communications, and written materials provided by or developed by the health insurers that contract for alternative rates of payment with providers shall comply with the standards developed under this section.

(f) Beginning on January 1, 2008, the department shall report biennially to the Legislature regarding health insurer compliance with

the standards established by this section, including results of compliance audits made in conjunction with other audits and reviews. The department shall also utilized the reported information to make recommendations for changes that further enhance standards pursuant to this section. The commissioner shall work to ensure that biennial reports required by this section, and the data collected for the reports do not require duplicative or conflicting data collection with other reports as may be required by government-sponsored programs. The commissioner may also delay or otherwise phase in implementation of the standards and requirements in recognition of costs and availability of translation and interpretation services and professionals.

(g) Nothing in this section shall prohibit a government purchaser from including in their contracts additional translation or interpretation requirements, to meet the linguistic and cultural needs, beyond those set forth pursuant to this section.

SEC. 5. Section 10133.9 is added to the Insurance Code, to read:

10133.9. Within a year after the health insurer's assessment pursuant to paragraph (2) of subdivision (b) of Section 10133.8, health insurers shall report to the Department of Insurance on internal policies and procedures related to cultural appropriateness, in a format specified by the department, in the following ways:

(a) Collection of data regarding the insured population based on the needs assessment as required by paragraph (2) of subdivision (b) of Section 10133.8.

(b) Education of health insurer staff who have routine contact with insureds regarding the diverse needs of the insured population.

(c) Recruitment and retention efforts that encourage workforce diversity.

(d) Evaluation of the health insurer's programs and services with respect to the insurer's enrollee populations, using processes such as an analysis of complaints and satisfaction survey results.

(e) The periodic provision of information regarding the ethnic diversity of the insurer's insured population and any related strategies to insurers providers. Insurers may use existing means of communication.

(f) The periodic provision of educational information to insureds on the insurer's services and programs. Insurers may use existing means of communication.

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 714

An act to amend Sections 66540.14, 66540.16, 66540.20, 66540.40, and 66540.72 of, to add Sections 66540.21, 66540.27, and 66540.29 to, and to repeal Sections 66540.22 and 66540.23 of, the Government Code, relating to transportation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 66540.14 of the Government Code is amended to read:

66540.14. There shall be a community advisory committee, which shall meet on a regular basis, and which shall include one member representing each local jurisdiction in which a water transit terminal exists or is proposed, and one member representing each special district providing public water transit services. Unless appointed under subparagraph (B) of paragraph (2) of subdivision (a) of Section 66540.2, one member shall be appointed by the city council of each city in which a water transit terminal is located or is proposed to be located, or by the county board of supervisors if the terminal is located or is proposed to be located in an unincorporated area, with one member appointed by the Golden Gate Bridge, Highway and Transportation District. The community advisory committee shall appoint one of its members to the board.

SEC. 2. Section 66540.16 of the Government Code is amended to read:

66540.16. (a) There shall be a technical advisory committee, which shall meet on a regular basis, and which shall consist of members representing local, regional, state, and federal agencies, operating ground transportation agencies, and operating water transit services.

(b) Additional members shall include at least one member who represents each of the following interests: fish and wildlife, recreational boating, private environmental protection entities, business, real estate development, architecture, urban planning, private sector vessel operators, and organized labor, as well as the public at large.

SEC. 3. Section 66540.20 of the Government Code is amended to read:

66540.20. (a) On July 10, 2003, the authority adopted the San Francisco Bay Area Water Transit Implementation and Operations Plan, consistent with the requirements of this title. The plan includes all appropriate landside, vessel, and support elements, operational and performance standards, and policies. The authority shall update the plan, as needed, subject to a public hearing.

(b) (1) Consistent with the requirements of this title, the authority certified the Final Programmatic Environmental Impact Report analyzing the expansion of ferry transit service in the San Francisco Bay area. The authority prepared the Final Programmatic Environmental Impact Report, adopted the Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Plan in conformance with California Environmental Quality Act (CEQA) guidelines. An independent evaluation conducted by the Bay Area Air Quality Management District required by this title was also completed.

(2) The authority shall be authorized to operate a comprehensive San Francisco Bay area regional public water transit system consistent with Section 66540.24.

(c) The primary focus of the authority and the plan shall be to provide new or expanded water transit services and related ground transportation terminal access services that were not in operation as of June 30, 1999. The authority shall seek to cooperatively involve in the implementation, planning, and operations all existing water transit services and related ground transportation agencies in whose jurisdictions existing or planned water transit terminals are located. The authority shall operate in good faith to avoid negatively impacting water transit services and related ground transportation terminal access services in existence as of June 30, 1999. The authority may not request an allocation of any funds that were available to the Metropolitan Transportation Commission for allocation on June 30, 1999, including the revenues dedicated from state-owned bridges to ferry services as of June 30, 1999, and revenues derived continuously from sources in the amounts and manner as specified in law in effect as of June 30, 1999, unless the request is for service transferred to the authority for vessels in operation as of January 1, 2003.

(d) The authority may not operate water transit services that are scheduled at the same time, from the same origin, and to the same destination as publicly sponsored services, if those public services were in operation as of June 30, 1999. The authority shall provide ferry services at only those terminals in which docking rights have been obtained with the consent of the owner of those rights.

(e) The authority shall negotiate in good faith, as described below, with public sponsors of existing water transit services and related ground transportation terminal access services to provide services in the

approved plan that would expand or augment existing services in their service district, as defined by law, or in plans of the Metropolitan Transportation Commission that existed and were in effect as of June 30, 1999. Good faith negotiations shall include all of the following steps:

(1) Notification by certified mail from the authority to the public sponsor of existing water transit services or related ground transportation terminal access services, hereafter referred to as the notified agency, setting forth the specific services to be negotiated, including performance standards and conditions and cost reimbursement available according to the plan approved by the Legislature.

(2) A period of 30 days from receipt of the notification required under paragraph (1) for the notified agency to declare in writing to the authority by certified mail their intent to negotiate in good faith. If the notified agency does not so declare in writing to the authority within 30 days, the notified agency shall be deemed not interested in negotiating for the service and the authority may announce a competitive bid process or take actions to directly operate the service if the board of directors of the authority makes a public finding that the action is in the public interest.

(3) A period of 90 days from declaration of intent to negotiate by the notified agency for the authority and notified agency to negotiate in good faith to reach agreement.

(4) The authority and notified agency, by mutual agreement, may extend the period for good faith negotiations.

(5) Notwithstanding the procedure described in subdivision (f), if at the end of 90 days or the mutually agreed-upon extension period for negotiations, the authority and the notified agency have not reached agreement for operation of the service, the authority may announce a competitive bid process. The notified agency may participate in that competitive bid process.

(f) If at the conclusion of the good faith negotiations process there is a dispute between the authority and the notified agency as to the impact of proposed new services on existing services, the matter shall be submitted to the Metropolitan Transportation Commission for resolution pursuant to Section 66516.5 of the Government Code. The Metropolitan Transportation Commission shall make a determination based on the demand model adopted by the authority as to whether the proposed new service will have a minor or major impact on services existing as of June 30, 1999. A minor impact means an impact that reasonably and potentially diverts less than 15 percent of the passengers using services that were in existence as of June 30, 1999. A major impact means an impact that reasonably and potentially diverts 15 percent or more of the passengers using services that were in existence as of June 30, 1999. If the proposed new service will have a major impact, the

authority may not operate a water transit service in that location without mutual agreement between the authority and the notified agency. If the proposed new service will have a minor impact, the authority may initiate service according to the procedures contained in subdivision (e).

SEC. 4. Section 66540.21 is added to the Government Code, to read:

66540.21. (a) If the authority does not receive notification to negotiate for water transit service proposed by the authority pursuant to subdivision (e) of Section 66540.20, the authority shall notify by certified mail a transit district that would provide bus service to a terminal specified in the plan to also provide water transit service at that terminal. The authority shall set forth in the notice the specific services to be provided, including performance standards and conditions and cost reimbursement available according to the plan and availability of funding.

(b) The authority shall negotiate with the transit district pursuant to the following steps:

(1) Within 30 days of receiving the notice, the transit district shall notify the authority by certified mail of its intent to negotiate in good faith. If the transit district does not respond by certified mail within 30 days, the authority may announce a competitive bid process or take action to directly operate the service.

(2) The transit district and the authority shall have 90 days to conduct good faith negotiations. The 90-day negotiating period shall commence on the day that the authority receives the notification from the transit district. This 90-day period may be extended by mutual agreement of the authority and the transit district.

(3) The transit district's proposal shall be presented to the authority's board of directors for consideration and the authority may accept the proposal and authorize staff to prepare an agreement for operation of services.

(4) If the authority rejects the proposal, it shall make findings stating the reasons why the proposal does not satisfy the conditions set forth by the authority in the initial notification of proposed water transit service.

(5) If the authority rejects the proposal, the authority may announce a competitive bid process, or take action to directly operate the service. The transit district may participate in the competitive bid process.

(c) For purposes of this section, ''transit district'' does not include a transit district that is notified by the authority pursuant to Section 66540.20 for the operation of water transit service.

SEC. 5. Section 66540.22 of the Government Code is repealed.

SEC. 6. Section 66540.23 of the Government Code is repealed.

SEC. 7. Section 66540.27 is added to the Government Code, to read:

66540.27. The air emission standard for new vessels mandated in the authority's plan shall exceed the federal Environmental Protection

Agency's air quality standards for Tier II 2007 marine engines by at least 85 percent as recommended in the authority's programmatic environmental review impact report.

SEC. 8. Section 66540.29 is added to the Government Code, to read:

66540.29. The authority shall dedicate at least one new vessel, subject to engine manufacturers' warranties, to employ biodiesel fuel (B20) to assess the practical application of using renewable fuels. If further funding becomes available for this application from regional, state, or federal funding sources, the authority shall consider increasing use of biodiesel fuel to demonstrate reduction in greenhouse gas emissions. The air emission standards set by the authority pursuant to this title shall apply to the use of biodiesel fuel.

SEC. 9. Section 66540.40 of the Government Code is amended to read:

66540.40. The authority may acquire, own, lease, construct, and operate water transit vessels and equipment, including, but not limited to, real and personal property, and equipment, and any facilities of the authority, except those facilities providing access to units of the national park system.

SEC. 10. Section 66540.72 of the Government Code is amended to read:

66540.72. The authority shall be funded from funds derived from proposed increases in tolls on state-owned toll bridges in the bay area pursuant to the expenditure plan approved by the Legislature in Senate Bill No. 916. The authority shall not be an eligible claimant for local transportation funds or state transportation assistance funds pursuant to the Transportation Development Act (Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code).

SEC. 11. This act is intended to serve as the approval by the Legislature of the San Francisco Bay Area Water Transit Implementation and Operations Plan as required by Section 66540.20 of the Government Code, as that section existed prior to the enactment of this act.

SEC. 12. Any duties and responsibilities imposed by this act shall be contingent upon funding for those purposes being derived from increases in tolls on state-owned toll bridges in the bay area pursuant to the expenditure plan in Senate Bill 916.

CHAPTER 715

An act to amend Section 14531 of the Government Code, to amend Sections 182.5, 188.3, 188.4, 188.10, 30101, 30101.8, 30113, 30600,

30601, 30604, 30606, 30750, 30751, 30760, 30761, 30791, 30884, 30885, 30887, 30889.3, 30891, 30894, 30910, 30912, 30913, 30915, 30916, 30918, 30919, 30920, 30950, 30950.1, 30950.2, 30950.3, 30950.4, 30953, 30958, 30960, 30961, 31000, 31010, and 31071 of, to amend and renumber Section 188.10 of, to add Sections 188.53, 30881, 30910.5, 30914.5, and 30922 to, and to repeal Sections 30603, 30605, 30608.2, 30752, 30753, 30754, 30755, 30756, 30757, 30762, 30762.5, 30763, 30764, 30764.5, 30765, 30766, 30767, 30791.7, 30792, 30792.2, 30793, 30794, 30795, 30886, 30888, 30889, 30896, and 30956 of, to repeal Article 5 (commencing with Section 30200) and Article 7 (commencing with Section 30350) of Chapter 1 of Division 17 of, to repeal and add Sections 30102.5, 30890, 30911, 30914, 30917, 30921, and 30951 of, the Streets and Highways Code, and to amend Section 5205.5 of the Vehicle Code, and to amend Section 5 of Chapter 898 of the Statutes of 1997 relating to transportation, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 14531 of the Government Code is amended to read:

14531. (a) The commission may amend the state transportation improvement program if the amendment meets both of the following conditions:

(1) The request for the amendment is made by the entity that submitted the project or projects that are in the program and are to be changed by the amendment.

(2) The total amount programmed in each county for regional improvements does not exceed the county's share prior to the amendment, or the total amount programmed in each county is treated as an adjustment to the share pursuant to Section 188.11 of the Streets and Highways Code.

(b) Public notice of the proposed amendments to the program or the plan shall be made at least 30 days before the commission takes formal action on the proposed amendments. The notice shall include the text and complete description of the proposed amendments.

SEC. 2. Section 182.5 of the Streets and Highways Code is amended to read:

182.5. (a) It is the intent of the Legislature that the transition to the new programs and procedures established in the bill enacting this section shall be fair and equitable and minimize disruptions in the delivery of projects. With specific reference to the transition from county

minimums to county shares for regional improvement, no project should be counted twice, no project that would be counted under either the old or new procedures should escape being counted in the transition, shares should be sufficient to fund projects programmed in the 1996 State Transportation Improvement Program for the same period, no incentive or reward should be provided for delaying a project, and no incentive or reward should be provided for allocating funds to a project earlier than the year in which the funds are needed for the project.

(b) At the end of the fiscal year ending June 30, 1998, the county minimums and county minimum deficits shall be recalculated under the law as it existed prior to the enactment of the bill adding this section.

(c) Notwithstanding Section 164, there shall be set aside sufficient funding for every project that is included in the 1996 State Transportation Improvement Program. This funding shall be set aside in the fund estimate prior to and in addition to the distribution of funding between programs pursuant to Section 164.

(d) The amount of the cumulative county minimum deficit calculated for any county pursuant to subdivision (b) shall be carried forward as a county share for the 1998 State Transportation Improvement Program, prior to and in addition to the computation of county shares pursuant to subdivision (a) of Section 188.8.

(e) The commission shall not allocate funds for any project unless the commission has programmed the state transportation improvement program in a manner that complies with the requirements of Sections 188, 188.8, and 188.11.

(f) Notwithstanding subdivision (a), for a county within the region defined by Section 66502 of the Government Code where funds were traded in the 1996 State Transportation Improvement Program to another county in that region, the county share for that county for the 1998 State Transportation Improvement Program shall be increased by the amount of the trade in the 1996 State Transportation Improvement Program, as if the share were a county minimum deficit under subdivision (d).

(g) In adopting the 1998 State Transportation Improvement Program, the commission shall, at a minimum, fund all intercity rail projects that are included in the adopted 1996 State Transportation Improvement Program. The amount of funds programmed for each project shall not be less than the amount in the 1996 State Transportation Improvement Program.

(h) The commission, after consulting with the department and the regional planning agencies, shall adopt interim guidelines and procedures relative to fund estimates and project selection in a manner that the first state transportation improvement program, pursuant to the

provisions of the act adding this section, is adopted not later than June 1, 1998.

SEC. 3. Section 188.3 of the Streets and Highways Code is amended to read:

188.3. The cost of maintenance of all toll bridges under the jurisdiction of the commission shall be paid out of money in the State Highway Account.

SEC. 4. Section 188.4 of the Streets and Highways Code is amended to read:

188.4. (a) Maintenance expenditures on all toll facilities owned by the state shall, for accounting purposes, be classified as Category A or Category B expenditures. Notwithstanding any other provision of law, the cost of maintenance of toll facilities in the geographic jurisdiction of the Metropolitan Transportation Commission shall be paid in accordance with the following:

(1) Category A maintenance shall be paid from the State Highway Account and shall include all normal highway maintenance which would be performed by the state according to state procedures as if the facility was a toll-free state facility.

(2) Category B maintenance shall be paid from toll revenues and shall include all maintenance and reconstruction work of those facilities such as toll facility administration buildings and toll booths which are constructed primarily for the purpose of collecting tolls.

(b) In no event shall the Category A maintenance expenditures for the toll bridges in the geographic jurisdiction of the Metropolitan Transportation Commission be funded at a lower percentage than was established in accordance with procedures for funding Category A maintenance of the toll bridges during the 1986–87 fiscal year.

SEC. 4.1. Section 188.10 of the Streets and Highways Code is amended to read:

188.10. (a) The Toll Bridge Seismic Retrofit Account is hereby created in the State Transportation Fund. The money in the account is hereby appropriated, without regard to fiscal years, to the department for the purpose of funding seismic retrofit or replacement of the bridges listed in Section 188.5. Notwithstanding Section 11012 of the Government Code, the department, in consultation with the Department of Finance and the Office of the State Treasurer, may authorize the investment of bond proceeds or commercial paper proceeds deposited into the account in obligations permitted by the Treasurer. Those invested amounts may be held by a trustee who is either the Treasurer or who is selected by the Treasurer. Authorized investments made pursuant to this section shall be included as cash balance for purposes of reporting the condition of the account in the Governor's proposed

budget or pursuant to the reporting requirement contained in subdivision (b) of Section 14556.9 of the Government Code.

(b) The Department of Finance shall provide notification to the Joint Legislative Budget Committee and to the transportation policy committee in each house in the form of a financing plan or pro forma at least 60 days prior to the initial issuance of any commercial paper or the issuance of any bonds for purposes of the toll bridge seismic retrofit program. The financing plan or pro forma shall include all of the following components:

(1) The amount and form of the debt issuance or issuances, the term of the issuance or issuances, repayment and security provisions, the amount and structure of any reserve funds, and all other details of the proposed financing.

(2) All necessary information with respect to the sources and uses of funds to construct the projects identified in the toll bridge seismic retrofit program and the timing of expenditures by each fund source by fiscal year.

(3) An assessment of funding available for the Bay Area Toll Authority for authorized projects as a result of the financing.

(c) The Department of Finance is not required to provide additional notification to the Legislature after meeting the requirements of subdivision (b) unless additional bonds are issued or changes are made to existing bonds that alter the content of the financing plan it submitted under subdivision (b). The Department of Finance shall notify the Legislature within 60 days of the closing of a refunding or an advance refunding of an existing bond but is not required to include this information in its report under subdivision (b).

(d) No interest income earned as a result of investments made pursuant to subdivision (a), or from reserve funds created to support the financing, shall be used to pay project costs that are in excess of four billion six hundred thirty-seven million dollars ($4,637,000,000). No reserve funds, other than a required debt service reserve fund, shall be in place subsequent to the completion of the seismic retrofit projects.

(e) Notwithstanding any other provision of law, the Department of Finance may establish the accounting and reporting system used to determine the expenditures, cash needs, and balance of the account.

SEC. 5. Section 188.10 of the Streets and Highways Code, as amended by Chapter 596 of the Statutes of 1998, is amended and renumbered to read:

188.11. (a) The commission, with assistance from the department and regional agencies, shall maintain a long-term balance of shares, shortfalls, and surpluses for regional improvement programs.

(b) The balance shall include all of the following:

(1) Shares from the fund estimate for each state transportation improvement program pursuant to Section 14525 of the Government Code.

(2) Amounts programmed in each state transportation improvement program pursuant to Section 14529 of the Government Code.

(3) Surpluses or shortfalls due to reservations or advancements pursuant to subdivision (j) of Section 188.8.

(4) Amounts deducted or added because of changes in project development costs or a cost increase or savings in the final engineering estimate or the final right-of-way certification estimate at the time of allocation for construction, pursuant to subdivisions (d) and (e) of Section 188.8.

(5) Any supplemental project allocations during or following construction.

(6) Amounts deducted or added because of amendments to the state transportation improvement program that add, delete, or change the scope and cost of regional improvement projects, pursuant to Section 14531 of the Government Code.

(c) The balance through the preceding fiscal year shall be made available for review by all regional agencies at the time of each fund estimate, and by not later than August 15 of each year.

(d) The commission, through the fund estimate, shall restore for the next state transportation improvement program the interregional improvement program level specified in subdivision (a) of Section 164.

SEC. 5.1. Section 188.53 is added to the Streets and Highways Code, to read:

188.53. Notwithstanding any other provision of law, it is the intent of the Legislature that the programming authorization described in subparagraph (B) of paragraph (8) of subdivision (b) of Section 188.5 is available for any and all state-owned toll bridge retrofit projects identified in paragraph (4) of subdivision (a) of Section 188.5.

SEC. 6. Section 30101 of the Streets and Highways Code is amended to read:

30101. Except as otherwise provided by statute for the commission and the Bay Area Toll Authority, the commission shall fix the rates of toll and other charges for all toll bridges, tubes, or other toll highway crossings acquired or built pursuant to this chapter. Notwithstanding this section or any other provision of law, neither the commission nor the Bay Area Toll Authority may change the seismic retrofit surcharge described in Section 31010.

SEC. 7. Section 30101.8 of the Streets and Highways Code is amended to read:

30101.8. (a) The commission may grant toll-free and reduced-rate passage on all toll bridges under its jurisdiction to class I vehicles

occupied by three or more persons, including the driver, and to buses. For bridges within the area under the jurisdiction of the Metropolitan Transportation Commission, the Bay Area Toll Authority may grant toll-free and reduced-rate passage.

(b) Notwithstanding subdivision (a), tolls on the bridges shall be maintained at rates sufficient to meet any obligation to the holders of bonds secured by a pledge of bridge toll revenues, as set forth in any bond resolution, indenture, or covenants, and the commission shall revise or eliminate any toll-free or reduced-rate toll schedule adopted pursuant to subdivision (a) as necessary to ensure compliance with those obligations.

(c) If the commission grants toll-free and reduced-rate passage pursuant to subdivision (a), the commission shall also grant the same toll-free and reduced-rate passage to class I vehicles designed by the manufacturer to be occupied by no more than two persons, including the driver, if these vehicles are occupied by two persons, including the driver.

SEC. 8. Section 30102.5 of the Streets and Highways Code is repealed.

SEC. 9. Section 30102.5 is added to the Streets and Highways Code, to read:

30102.5. Consistent with Section 30918, the Bay Area Toll Authority shall fix the rates of the toll charge, except as provided in Section 30921, and may grant reduced-rate and toll-free passage on the state-owned toll bridges within the jurisdiction of the Metropolitan Transportation Commission.

SEC. 10. Section 30113 of the Streets and Highways Code is amended to read:

30113. (a) The commission may utilize net revenues from toll bridges in order to finance research on high technology motion control devices to be used on the bridges.

(b) If the Metropolitan Transportation Commission allocates toll bridge net revenues as defined in Section 30884, it may utilize net revenues from the bridges under its jurisdiction to finance the research referred to in subdivision (a).

SEC. 11. Article 5 (commencing with Section 30200) of Chapter 1 of Division 17 of the Streets and Highways Code is repealed.

SEC. 12. Article 7 (commencing with Section 30350) of Chapter 1 of Division 17 of the Streets and Highways Code is repealed.

SEC. 13. Section 30600 of the Streets and Highways Code is amended to read:

30600. As used in this article, the following definitions apply:

(a) ''Authority'' means the Bay Area Toll Authority created pursuant to Chapter 4.3 (commencing with Section 30950).

(b) ''Toll bridge'' means that certain bridge across San Francisco Bay known as the San Francisco-Oakland Bay Bridge and the approaches thereto.

SEC. 14. Section 30601 of the Streets and Highways Code is amended to read:

30601. The toll bridge and the approaches to it are a primary state highway. No law providing that state highways shall be free highways affects the power or duty of the authority to fix the rates of toll for the toll bridge or the power and duty of the department to collect the tolls so fixed by the authority for the use of the toll bridge.

SEC. 15. Section 30603 of the Streets and Highways Code is repealed.

SEC. 16. Section 30604 of the Streets and Highways Code is amended to read:

30604. The department shall at all times cause the toll bridge to comply with all lawful orders of the United States Secretary of Defense, the Chief of Engineers of the United States Army, and of any other governmental agency or authority having jurisdiction thereof.

SEC. 17. Section 30605 of the Streets and Highways Code is repealed.

SEC. 18. Section 30606 of the Streets and Highways Code is amended to read:

30606. The cost of operating and maintaining the architectural lights on the toll bridge shall be paid by the department from toll bridge revenue funds available for the operation of the toll bridge.

SEC. 19. Section 30608.2 of the Streets and Highways Code is repealed.

SEC. 20. Section 30750 of the Streets and Highways Code is amended to read:

30750. As used in this article:

(a) ''Carquinez Bridge'' means those certain bridge spans on Interstate Route 80 across the Carquinez Straits near Crockett, together with any existing or new and additional approaches thereto, necessary or desirable to connect with the present spans or any additional spans and the toll collection facilities to serve both the existing bridge span and any additional spans.

(b) ''Benicia-Martinez Bridge'' means the toll bridge across the Carquinez Straits on Interstate Route 680 connecting the Cities of Benicia and Martinez, together with any existing or new and additional approaches thereto, necessary or desirable with respect to the present span or any spans and toll collection facilities for the bridge and any additional spans.

SEC. 21. Section 30751 of the Streets and Highways Code is amended to read:

30751. The department is authorized to lay out, acquire, and construct the Carquinez Bridge and the Benicia-Martinez Bridge and to make any modification, improvement, and reconstruction of the bridges as is necessary to adequately handle anticipated traffic and permit the collection of tolls.

SEC. 22. Section 30752 of the Streets and Highways Code is repealed.

SEC. 23. Section 30753 of the Streets and Highways Code is repealed.

SEC. 24. Section 30754 of the Streets and Highways Code is repealed.

SEC. 25. Section 30755 of the Streets and Highways Code is repealed.

SEC. 26. Section 30756 of the Streets and Highways Code is repealed.

SEC. 27. Section 30757 of the Streets and Highways Code is repealed.

SEC. 28. Section 30760 of the Streets and Highways Code is amended to read:

30760. As used in this article, ''Antioch Bridge'' means the high-level fixed-span bridge across the San Joaquin River near Antioch together with the approaches thereto and the toll collection facilities for the bridge.

SEC. 29. Section 30761 of the Streets and Highways Code is amended to read:

30761. The department is authorized to modify, improve, reconstruct, and remodel the Antioch Bridge as is necessary to adequately handle anticipated traffic and permit the collection of tolls.

SEC. 30. Section 30762 of the Streets and Highways Code is repealed.

SEC. 31. Section 30762.5 of the Streets and Highways Code is repealed.

SEC. 32. Section 30763 of the Streets and Highways Code is repealed.

SEC. 33. Section 30764 of the Streets and Highways Code is repealed.

SEC. 34. Section 30764.5 of the Streets and Highways Code is repealed.

SEC. 35. Section 30765 of the Streets and Highways Code is repealed.

SEC. 36. Section 30766 of the Streets and Highways Code is repealed.

SEC. 37. Section 30767 of the Streets and Highways Code is repealed.

SEC. 38. Section 30791 of the Streets and Highways Code is amended to read:

30791. The department is authorized to modify, improve, reconstruct, and remodel the San Mateo-Hayward Bridge and the Dumbarton Bridge as is necessary to adequately handle anticipated traffic and permit the collection of tolls.

SEC. 39. Section 30791.7 of the Streets and Highways Code is repealed.

SEC. 40. Section 30792 of the Streets and Highways Code is repealed.

SEC. 41. Section 30792.2 of the Streets and Highways Code is repealed.

SEC. 42. Section 30793 of the Streets and Highways Code is repealed.

SEC. 43. Section 30794 of the Streets and Highways Code is repealed.

SEC. 44. Section 30795 of the Streets and Highways Code is repealed.

SEC. 45. Section 30881 is added to the Streets and Highways Code, to read:

30881. ''Authority'' means the Bay Area Toll Authority.

SEC. 46. Section 30884 of the Streets and Highways Code is amended to read:

30884. (a) ''Net transit revenues'' means those revenues of the San Francisco-Oakland Bay Bridge, the San Mateo-Hayward Bridge, and the Dumbarton Bridge determined by the authority as derived from the toll increase instituted by the commission in 1977. The calculation of the amount of the net transit revenues is equal to 16 percent of the revenue generated each year from the collection of the base toll at its level in existence for the 2001–02 fiscal year on the San Francisco-Oakland Bay Bridge, the San Mateo-Hayward Bridge, and the Dumbarton Bridge.

(b) The net transit revenues are subordinate to all of the following:

(1) The obligation to pay necessary costs of toll collection operation.

(2) The obligations of the authority under any bond resolution or indenture applicable to the toll bridges issued by the authority.

(3) The obligation to repay any advances made to the department from any other source for studies and work preliminary to the financing of any toll bridge project.

SEC. 47. Section 30885 of the Streets and Highways Code is amended to read:

30885. ''Toll bridge'' means any state-owned bridge, including the approaches to the toll bridge from the nearest highway that is not for the exclusive use of toll bridge traffic, located within the region under the jurisdiction of the commission.

SEC. 48. Section 30886 of the Streets and Highways Code is repealed.

SEC. 49. Section 30887 of the Streets and Highways Code is amended to read:

30887. The authority may increase the toll rates specified in the adopted toll schedule only if this is necessary in order to enable the authority to meet its obligations under any bond resolution or indenture.

SEC. 50. Section 30888 of the Streets and Highways Code is repealed.

SEC. 51. Section 30889 of the Streets and Highways Code is repealed.

SEC. 52. Section 30889.3 of the Streets and Highways Code is amended to read:

30889.3. (a) The authority may grant toll-free passage or may adopt a reduced-rate schedule of tolls for vehicles occupied by three or more persons, including the driver, and for buses crossing the bridges. The reduced-rate toll for those vehicles shall be determined by the authority in consultation with the department, and may consist of reduced daily tolls or payment in lieu of daily tolls. If the authority grants toll-free passage or adopts a reduced-rate toll schedule under this subdivision, it shall grant toll-free passage or adopt the same schedule for class I vehicles designed by the manufacturer to be occupied by not more than two persons, including the driver, if these vehicles are occupied by two persons, including the driver.

(b) Tolls on the bridges shall be maintained at rates sufficient to meet any obligations to the holders of bonds secured by the bridge toll revenues, as set forth in any bond resolution or indenture or obligation contained in bonds issued pursuant to the bond resolution or indenture, and the authority shall revise or eliminate the reduced-rate toll schedule adopted pursuant to subdivision (a) as necessary to ensure compliance with those obligations.

(c) The authority may also vary, as it deems advisable, the toll rates applicable to a vehicle operated on the bridges for the carriage of passengers by any municipal or public corporation, transit district, public utility district, political subdivision, or by a transportation company operating under a certificate of public convenience and necessity. The authority shall consult with the affected operators prior to adopting any toll rate pursuant to this subdivision.

SEC. 53. Section 30890 of the Streets and Highways Code is repealed.

SEC. 54. Section 30890 is added to the Streets and Highways Code, to read:

30890. The authority shall transfer the net transit revenues, as defined in Section 30884, to the commission on a regularly scheduled basis as set forth in the authority's annual budget resolution.

SEC. 55. Section 30891 of the Streets and Highways Code is amended to read:

30891. The commission may retain, for its cost in administering this article, an amount not to exceed one-quarter of 1 percent of the revenues allocated by it pursuant to Section 30892 and of the revenues allocated by it pursuant to Sections 30913 and 30914.

SEC. 56. Section 30894 of the Streets and Highways Code is amended to read:

30894. The commission shall adopt and distribute procedures for the submission of applications for funding and allocation of funds. Only those applications for projects that will implement the commission's transportation planning objectives in the vicinity of toll bridges as set forth in its adopted regional transportation plan or the commission's objectives with respect to ferry systems shall be approved.

SEC. 57. Section 30896 of the Streets and Highways Code is repealed.

SEC. 58. Section 30910 of the Streets and Highways Code is amended to read:

30910. (a) The state-owned toll bridges within the geographic jurisdiction of the Metropolitan Transportation Commission are the following bridges:

(1) Antioch Bridge.
(2) Benicia-Martinez Bridge.
(3) Carquinez Bridges.
(4) Dumbarton Bridge.
(5) Richmond-San Rafael Bridge.
(6) San Mateo-Hayward Bridge.
(7) San Francisco-Oakland Bay Bridge.

(b) The Antioch Bridge, the Benicia-Martinez Bridge, the Carquinez Bridges, and the Richmond-San Rafael Bridge are at times classified as the northern bridge unit, and the Dumbarton Bridge, the San Mateo-Hayward Bridge, and the San Francisco-Oakland Bay Bridge are at times classified as the southern bridge unit. For purposes of operation, rehabilitation, maintenance, and financing, all of the bridges are classified as a single enterprise.

SEC. 58.5. Section 30910.5 is added to the Streets and Highways Code, to read:

30910.5. ''Authority'' means the Bay Area Toll Authority.

SEC. 59. Section 30911 of the Streets and Highways Code is repealed.

SEC. 60. Section 30911 is added to the Streets and Highways Code, to read:

30911. (a) The authority shall control and maintain the Bay Area Toll Account and other subaccounts it deems necessary and appropriate to document toll revenue and operating expenditures in accordance with generally accepted accounting principles.

(b) (1) After the requirements of any bond resolution or indenture of the authority for any outstanding revenue bonds have been met, the authority shall transfer on a regularly scheduled basis as set forth in the authority's annual budget resolution, the revenues defined in subdivision (b) of Section 30913 and Section 30914 to the commission. The funds transferred are continuously appropriated to the commission to expend for the purposes specified in subdivision (b) of Section 30913 and Section 30914.

(2) For the purposes of paragraph (1), the revenues defined in subdivision (b) of Section 30913 and subdivision (a) of Section 30914 include all revenues accruing since January 1, 1989.

SEC. 61. Section 30912 of the Streets and Highways Code is amended to read:

30912. (a) Revenue derived from tolls on all bridges may be expended, subject to the adopted annual budget of the authority, for any of the following purposes:

(1) Safety and operational costs, including toll collection.

(2) Costs of bridge construction and improvement projects, including debt service and sinking fund payments on bonds issued by the authority for those projects. The repayment of any advances from other state funds may be made from the toll revenue or bond proceeds.

(b) The revenue determined by the authority as derived from the toll increase approved in 1988, and authorized by Section 30917 for class I vehicles on the San Francisco-Oakland Bay Bridge shall be used, to the extent specified in paragraph (4) of subdivision (a) of Section 30914, for the construction of rail extensions specified in Section 30914 or for payment of the principal of, and interest on, bonds issued for those projects, including payments into a sinking fund maintained for that purpose.

(c) Maintenance of the bridges specified in Section 30910 shall be funded in accordance with procedures for funding maintenance of the southern bridge unit during the 1986–87 fiscal year.

SEC. 62. Section 30913 of the Streets and Highways Code is amended to read:

30913. (a) In addition to any other authorized expenditure of toll bridge revenues, the following major projects may be funded from toll revenues:

(1) Benicia-Martinez Bridge: Widening of the existing bridge.

(2) Benicia-Martinez Bridge: Construction of an additional span parallel to the existing bridge.

(3) Carquinez Bridge: Replacement of the existing western span.

(4) Richmond-San Rafael Bridge: Major rehabilitation of the bridge, and development of a new easterly approach between the toll plaza and Route 80, near Pinole, known as the Richmond Parkway.

(b) The toll increase approved in 1988, which authorized a uniform toll of one dollar ($1) for two-axle vehicles on the bridges and corresponding increases for multi-axle vehicles, resulted in the following toll increases for two-axle vehicles on the bridges:

Bridge	1988 Increase (Two–axle vehicles)
Antioch Bridge	$0.50
Benicia-Martinez Bridge	.60
Carquinez Bridge	.60
Dumbarton Bridge	.25
Richmond-San Rafael Bridge	.00
San Francisco-Oakland Bay Bridge	.25
San Mateo-Hayward Bridge	.25

Portions of the 1988 toll increase were dedicated to transit purposes, and these amounts shall be calculated as up to 2 percent of the revenue generated each year by the collection on all bridges of the base toll at the level established by the 1988 toll increase. The Metropolitan Transportation Commission shall allocate two-thirds of these amounts for transportation projects, other than those specified in Sections 30912 and 30913 and in subdivision (a) of Section 30914, which are designed to reduce vehicular traffic congestion and improve bridge operations on any bridge, including, but not limited to, bicycle facilities and for the planning, construction, operation, and acquisition of rapid water transit systems. The commission shall allocate the remaining one-third solely for the planning, construction, operation, and acquisition of rapid water transit systems. The plans for the projects may also be funded by these moneys.

(c) The department shall not include, in the plans for the new Benicia-Martinez Bridge, toll plazas, highways, or other facilities leading to or from the Benicia-Martinez Bridge, any construction that would result in the net loss of any wetland acreage.

(d) With respect to the Benicia-Martinez and Carquinez Bridges, the department shall consider the potential for rail transit as part of the plans for the new structures specified in paragraphs (2) and (3) of subdivision (a).

(e) At the time the first of the new bridges specified in paragraphs (2) and (3) of subdivision (a) is opened to the public, there shall be a lane for the exclusive use of pedestrians and bicycles available on at least, but not limited to, the original span at Benicia or Carquinez, or the additional or replacement spans planned for those bridges. The design of these bridges shall not preclude the subsequent addition of a lane for the exclusive use of pedestrians and bicycles.

SEC. 63. Section 30914 of the Streets and Highways Code is repealed.

SEC. 64. Section 30914 is added to the Streets and Highways Code, to read:

30914. (a) In addition to any other authorized expenditures of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges:

(1) Dumbarton Bridge: Improvement of the western approaches from Route 101 if affected local governments are involved in the planning.

(2) San Mateo-Hayward Bridge and approaches: Widening of the bridge to six lanes, construction of rail transit capital improvements on the bridge structure, and improvements to the Route 92/Route 880 interchange.

(3) Construction of West Grand connector or an alternate project designed to provide comparable benefit by reducing vehicular traffic congestion on the eastern approaches to the San Francisco-Oakland Bay Bridge. Affected local governments shall be involved in the planning.

(4) Not less than 90 percent of the revenues determined by the authority as derived from the toll increase approved in 1988 for class I vehicles on the San Francisco-Oakland Bay Bridge authorized by Section 30917 shall be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. This amount shall be calculated as 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 increase on the San Francisco-Oakland Bay Bridge.

(b) Notwithstanding any funding request for the transbay bus terminal pursuant to Section 31015, the Metropolitan Transportation Commission shall allocate toll bridge revenues in an annual amount not to exceed three million dollars ($3,000,000), plus a 3.5-percent annual increase, to the department or to the Transbay Joint Powers Authority after the department transfers the title of the Transbay Terminal Building to that entity, for operation and maintenance expenditures. This allocation shall be payable from funds transferred by the Bay Area Toll Authority. This transfer of funds is subordinate to any obligations of the authority, now or hereafter existing, having a statutory or first priority lien against the toll bridge revenues. The first annual 3.5 percent increase

shall be made on July 1, 2004. The transfer is further subject to annual certification by the department or the Transbay Joint Powers Authority that the total Transbay Terminal Building operating revenue is insufficient to pay the cost of operation and maintenance without the requested funding.

(c) If the voters approve a toll increase in 2004 pursuant to Section 30921, the authority shall, consistent with the provisions of subdivisions (d) and (f), fund the projects described in this subdivision and in subdivision (d) that shall collectively be known as the Regional Traffic Relief Plan by bonding or transfers to the Metropolitan Transportation Commission. These projects have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, from toll revenues of all bridges:

(1) BART/MUNI Connection at Embarcadero and Civic Center Stations. Provide direct access from the BART platform to the MUNI platform at the above stations and equip new fare gates that are TransLink ready. Three million dollars ($3,000,000). The project sponsor is BART.

(2) MUNI Metro Third Street Light Rail Line. Provide funding for the surface and light rail transit and maintenance facility to support MUNI Metro Third Street Light Rail service connecting to Caltrain stations and the E-Line waterfront line. Thirty million dollars ($30,000,000). The project sponsor is MUNI.

(3) MUNI Waterfront Historic Streetcar Expansion. Provide funding to rehabilitate historic street cars and construct trackage and terminal facilities to support service from the Caltrain Terminal, the Transbay Terminal, and the Ferry Building, and connecting the Fisherman's Wharf and northern waterfront. Ten million dollars ($10,000,000). The project sponsor is MUNI.

(4) East to West Bay Commuter Rail Service over the Dumbarton Rail Bridge. Provide funding for the necessary track and station improvements and rolling stock to interconnect the BART and Capitol Corridor at Union City with Caltrain service over the Dumbarton Rail Bridge, and interconnect and provide track improvements for the ACE line with the same Caltrain service at Centerville. Provide a new station at Sun Microsystems in Menlo Park. One hundred thirty-five million dollars ($135,000,000). The project is jointly sponsored by the San Mateo County Transportation Authority, Capitol Corridor, the Alameda County Congestion Management Agency, and the Alameda County Transportation Improvement Authority.

(5) Vallejo Station. Construct intermodal transportation hub for bus and ferry service, including parking structure, at site of Vallejo's current ferry terminal. Twenty-eight million dollars ($28,000,000). The project sponsor is the City of Vallejo.

(6) Solano County Express Bus Intermodal Facilities. Provide competitive grant fund source, to be administered by BATA. Eligible projects are Curtola Park and Ride, Benicia Intermodal Facility, Fairfield Transportation Center and Vacaville Intermodal Station. Priority to be given to projects that are fully funded, ready for construction, and serving transit service that operates primarily on existing or fully funded high-occupancy vehicle lanes. Twenty million dollars ($20,000,000). The project sponsor is Solano Transportation Authority.

(7) Solano County Corridor Improvements near Interstate 80/Interstate 680 Interchange. Provide funding for improved mobility in corridor based on recommendations of joint study conducted by the Department of Transportation and the Solano Transportation Authority. Cost-effective transit infrastructure investment or service identified in the study shall be considered a high priority. One hundred million dollars ($100,000,000). The project sponsor is Solano Transportation Authority.

(8) Interstate 80: Eastbound High-Occupancy Vehicle (HOV) Lane Extension from Route 4 to Carquinez Bridge. Construct HOV-lane extension. Fifty million dollars ($50,000,000). The project sponsor is the Department of Transportation.

(9) Richmond Parkway Transit Center. Construct parking structure and associated improvements to expand bus capacity. Sixteen million dollars ($16,000,000). The project sponsor is Alameda-Contra Costa Transit District, in coordination with West Contra Costa Transportation Advisory Committee, Western Contra Costa Transit Authority, City of Richmond, and the Department of Transportation.

(10) Sonoma-Marin Area Rail Transit District (SMART) Extension to Larkspur or San Quentin. Extend rail line from San Rafael to a ferry terminal at Larkspur or San Quentin. Thirty-five million dollars ($35,000,000). Up to five million dollars ($5,000,000) may be used to study, in collaboration with the Water Transit Authority, the potential use of San Quentin property as an intermodal water transit terminal. The project sponsor is SMART.

(11) Greenbrae Interchange/Larkspur Ferry Access Improvements. Provide enhanced regional and local access around the Greenbrae Interchange to reduce traffic congestion and provide multimodal access to the Richmond-San Rafael Bridge and Larkspur Ferry Terminal by constructing a new full service diamond interchange at Wornum Drive south of the Greenbrae Interchange, extending a multiuse pathway from the new interchange at Wornum Drive to East Sir Francis Drake Boulevard and the Cal Park Hill rail right-of-way, adding a new lane to East Sir Francis Drake Boulevard and rehabilitating the Cal Park Hill Rail Tunnel and right-of-way approaches for bicycle and pedestrian

access to connect the San Rafael Transit Center with the Larkspur Ferry Terminal. Sixty-five million dollars ($65,000,000). The project sponsor is Marin County Congestion Management Agency.

(12) Direct High-Occupancy Vehicle (HOV) lane connector from Interstate 680 to the Pleasant Hill or Walnut Creek BART stations or in close proximity to either station or as an extension of the southbound Interstate 680 High-Occupancy Vehicle Lane through the Interstate 680/State Highway Route 4 interchange from North Main in Walnut Creek to Livorna Road. The County Connection shall utilize up to one million dollars ($1,000,000) of the funds described in this paragraph to develop options and recommendations for providing express bus service on the Interstate 680 High-Occupancy Vehicle Lane south of the Benicia Bridge in order to connect to BART. Upon completion of the plan, the Contra Costa Transportation Authority shall adopt a preferred alternative provided by the County Connection plan for future funding. Following adoption of the preferred alternative, the remaining funds may be expended either to fund the preferred alternative or to extend the high-occupancy vehicle lane as described in this paragraph. Fifteen million dollars ($15,000,000). The project is sponsored by the Contra Costa Transportation Authority.

(13) Rail Extension to East Contra Costa/E-BART. Extend BART from Pittsburg/Bay Point Station to Byron in East Contra Costa County. Ninety-six million dollars ($96,000,000). Project funds may only be used if the project is in compliance with adopted BART policies with respect to appropriate land use zoning in vicinity of proposed stations. The project is jointly sponsored by BART and Contra Costa Transportation Authority.

(14) Capital Corridor Improvements in Interstate 80/Interstate 680 Corridor. Fund track and station improvements, including the Suisun Third Main Track and new Fairfield Station. Twenty-five million dollars ($25,000,000). The project sponsor is Capital Corridor Joint Powers Authority and the Solano Transportation Authority.

(15) Central Contra Costa Bay Area Rapid Transit (BART) Crossover. Add new track before Pleasant Hill BART Station to permit BART trains to cross to return track towards San Francisco. Twenty-five million dollars ($25,000,000). The project sponsor is BART.

(16) Benicia-Martinez Bridge: New Span. Provide partial funding for completion of new five-lane span between Benicia and Martinez to significantly increase capacity in the I-680 corridor. Fifty million dollars ($50,000,000). The project sponsor is the Bay Area Toll Authority.

(17) Regional Express Bus North. Competitive grant program for bus service in Richmond-San Rafael Bridge, Carquinez, Benicia-Martinez and Antioch Bridge corridors. Provide funding for park and ride lots, infrastructure improvements, and rolling stock. Eligible recipients

include Golden Gate Bridge Highway and Transportation District, Vallejo Transit, Napa VINE, Fairfield-Suisun Transit, Western Contra Costa Transit Authority, Eastern Contra Costa Transit Authority, and Central Contra Costa Transit Authority. The Golden Gate Bridge Highway and Transportation District shall receive a minimum of one million six hundred thousand dollars ($1,600,000). Napa VINE shall receive a minimum of two million four hundred thousand dollars ($2,400,000). Twenty million dollars ($20,000,000). The project sponsor is the Metropolitan Transportation Commission.

(18) TransLink. Integrate the bay area's regional smart card technology, TransLink, with operator fare collection equipment and expand system to new transit services. Twenty-two million dollars ($22,000,000). The project sponsor is the Metropolitan Transportation Commission.

(19) Real-Time Transit Information. Provide a competitive grant program for transit operators for assistance with implementation of high-technology systems to provide real-time transit information to riders at transit stops or via telephone, wireless, or Internet communication. Priority shall be given to projects identified in the commission's connectivity plan adopted pursuant to subdivision (d) of Section 30914.5. Twenty million dollars ($20,000,000). The funds shall be administered by the Metropolitan Transportation Commission.

(20) Safe Routes to Transit: Plan and construct bicycle and pedestrian access improvements in close proximity to transit facilities. Priority shall be given to those projects that best provide access to regional transit services. Twenty-two million five hundred thousand dollars ($22,500,000). City Car Share shall receive two million five hundred thousand dollars ($2,500,000) to expand its program within approximately one-quarter mile of transbay regional transit terminals or stations. The project is jointly sponsored by the East Bay Bicycle Coalition and the Transportation and Land Use Coalition. These sponsors must identify a public agency cosponsor for purposes of specific project fund allocations.

(21) BART Tube Seismic Strengthening. Add seismic capacity to existing BART tube connecting the east bay with San Francisco. One hundred forty-three million dollars ($143,000,000). The project sponsor is BART.

(22) Transbay Terminal/Downtown Caltrain Extension. A new Transbay Terminal at First and Mission Streets in San Francisco providing added capacity for transbay, regional, local, and intercity bus services, the extension of Caltrain rail services into the terminal, and accommodation of a future high speed passenger rail line to the terminal and eventual rail connection to the east bay. Eligible expenses include project planning, design and engineering, construction of a new terminal

and its associated ramps and tunnels, demolition of existing structures, design and development of a temporary terminal, property and right-of-way acquisitions required for the project, and associated project-related administrative expenses. A bus- and train-ready terminal facility, including purchase and acquisition of necessary rights-of-way for the terminal, ramps, and rail extension, is the first priority for toll funds for the Transbay Terminal/Downtown Caltrain Extension Project. The temporary terminal operation shall not exceed five years. One hundred fifty million dollars ($150,000,000). The project sponsor is the Transbay Joint Powers Authority.

(23) Oakland Airport Connector. New transit connection to link BART, Capitol Corridor and AC Transit with Oakland Airport. The Port of Oakland shall provide a full funding plan for the connector. Thirty million dollars ($30,000,000). The project sponsors are the Port of Oakland and BART.

(24) AC Transit Enhanced Bus-Phase 1 on Telegraph Avenue, International Boulevard, and East 14th Street (Berkeley-Oakland-San Leandro). Develop enhanced bus service on these corridors, including bus bulbs, signal prioritization, new buses, and other improvements. Priority of investment shall improve the AC connection to BART on these corridors. Sixty-five million dollars ($65,000,000). The project sponsor is AC Transit.

(25) Commute Ferry Service for Alameda/Oakland/Harbor Bay. Purchase two vessels for ferry services between Alameda and Oakland areas and San Francisco. Second vessel funds to be released upon demonstration of appropriate terminal locations, new transit oriented development, adequate parking, and sufficient landside feeder connections to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(26) Commute Ferry Service for Berkeley/Albany. Purchase two vessels for ferry services between the Berkeley/Albany Terminal and San Francisco. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements. If the Water Transit Authority does not have an entitled terminal site within the Berkeley/Albany catchment area by 2010 that meets its requirements, the funds described in this

paragraph and the operating funds described in paragraph (7) of subdivision (d) shall be transferred to another site in the east bay. The City of Richmond shall be given first priority to receive this transfer of funds if it has met the planning milestones identified in its special study developed pursuant to paragraph (28).

(27) Commute Ferry Service for South San Francisco. Purchase two vessels for ferry services to the peninsula. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(28) Water Transit Facility Improvements, Spare Vessels, and Environmental Review Costs. Provide two backup vessels for Water Transit Authority services, expand berthing capacity at the Port of San Francisco, and expand environmental studies and design for eligible locations. Forty-eight million dollars ($48,000,000). The project sponsor is Water Transit Authority. Up to one million dollars ($1,000,000) of the funds described in this paragraph shall be made available for the Water Transit Authority to study accelerating development and other milestones that would potentially increase ridership at the City of Richmond ferry terminal.

(29) Regional Express Bus Service for San Mateo, Dumbarton, and Bay Bridge Corridors. Expand park and ride lots, improve HOV access, construct ramp improvements, and purchase rolling stock. Twenty-two million dollars ($22,000,000). The project sponsors are AC Transit and Alameda County Congestion Management Agency.

(30) I-880 North Safety Improvements. Reconfigure various ramps on I-880 and provide appropriate mitigations between 29th Avenue and 16th Avenue. Ten million dollars ($10,000,000). The project sponsors are Alameda County Congestion Management Agency, City of Oakland, and Department of Transportation.

(31) BART Warm Springs Extension . Extension of the existing BART system from Fremont to Warm Springs in southern Alameda County. Ninety-five million dollars ($95,000,000). Up to ten million dollars ($10,000,000) shall be used for grade separation work in the City of Fremont necessary to extend BART. The project would facilitate a future rail service extension to the Silicon Valley. The project sponsor is BART.

(32) I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by

express buses. Sixty-five million dollars ($65,000,000). The project sponsor is Alameda County Congestion Management Agency.

(33) Regional Rail Master Plan. Provide planning funds for integrated regional rail study pursuant to subdivision (f) of Section 30914.5. Six million five hundred thousand dollars ($6,500,000). The project sponsors are Caltrain and BART.

(34) Integrated Fare Structure Program. Provide planning funds for the development of zonal monthly transit passes pursuant to subdivision (e) of Section 30914.5. One million five hundred thousand dollars ($1,500,000). The project sponsor is the Translink Consortium.

(35) Transit Commuter Benefits Promotion. Marketing program to promote tax-saving opportunities for employers and employees as specified in Section 132(f)(3) of the Internal Revenue Code. Goal is to increase the participation rate of employers offering employees a tax-free benefit to commute to work by transit. The project sponsor is the Metropolitan Transportation Commission. Five million dollars ($5,000,000).

(36) Caldecott Tunnel Improvements. Provide funds to plan and construct a fourth bore at the Caldecott Tunnel between Contra Costa and Alameda Counties. The fourth bore will be a two-lane bore with a shoulder or shoulders north of the current three bores. The County Connection shall study all feasible alternatives to increase transit capacity in the westbound corridor of State Highway Route 24 between State Highway Route 680 and the Caldecott Tunnel, including the study of the use of an express lane, high-occupancy vehicle lane, and an auxiliary lane. The cost of the study shall not exceed five hundred thousand dollars ($500,000) and shall be completed not later than January 15, 2006. Fifty million five hundred thousand dollars ($50,500,000). The project sponsor is the Contra Costa Transportation Authority.

(d) Not more than 38 percent of the revenues generated from the toll increase shall be made available annually for the purpose of providing operating assistance for transit services as set forth in the authority's annual budget resolution. The funds shall be made available to the provider of the transit services subject to the performance measures described in Section 30914.5. If the funds cannot be obligated for operating assistance consistent with the performance measures, these funds shall be obligated for other operations consistent with this chapter.

Except for operating programs that do not have planned funding increases and subject to the 38-percent limit on total operating cost funding in any single year, following the first year of scheduled operations, an escalation factor, not to exceed 1.5 percent per year, shall be added to the operating cost funding through fiscal year 2015–16, to partially offset increased operating costs. The escalation factors shall be

contained in the operating agreements described in Section 30914.5. Subject to the limitations of this paragraph, the Metropolitan Transportation Commission may annually fund the following operating programs as another component of the Regional Traffic Relief Plan:

(1) Golden Gate Express Bus Service over the Richmond Bridge (Route 40). Two million one hundred thousand dollars ($2,100,000).

(2) Napa Vine Service terminating at the Vallejo Intermodal Terminal. Three hundred ninety thousand dollars ($390,000).

(3) Regional Express Bus North Pool serving the Carquinez and Benicia Bridge Corridors. Three million four hundred thousand dollars ($3,400,000).

(4) Regional Express Bus South Pool serving the Bay Bridge, San Mateo Bridge, and Dumbarton Bridge Corridors. Six million five hundred thousand dollars ($6,500,000).

(5) Dumbarton Rail. Five million five hundred thousand ($5,500,000).

(6) Water Transit Authority, Alameda/Oakland/Harbor Bay. A portion of the operating funds may be dedicated to landside transit operations. Six million four hundred thousand dollars ($6,400,000).

(7) Water Transit Authority, Berkeley/Albany. A portion of the operating funds may be dedicated to landside transit operations. Three million two hundred thousand dollars ($3,200,000).

(8) Water Transit Authority, South San Francisco. A portion of the operating funds may be dedicated to landside operations. Three million dollars ($3,000,000).

(9) Vallejo Ferry. Two million seven hundred thousand dollars ($2,700,000).

(10) Owl Bus Service on BART Corridor. One million eight hundred thousand dollars ($1,800,000).

(11) MUNI Metro Third Street Light Rail Line. Two million five hundred thousand dollars ($2,500,000) without escalation.

(12) AC Transit Enhanced Bus Service on Telegraph Avenue, International Boulevard, and East 14th Street in Berkeley-Oakland-San Leandro. Three million dollars ($3,000,000) without escalation.

(13) TransLink, three-year operating program. Twenty million dollars ($20,000,000) without escalation.

(14) Water Transit Authority, regional planning and operations. Three million dollars ($3,000,000) without escalation.

(e) For all projects authorized under subdivision (c), the project sponsor shall submit an initial project report to the Metropolitan Transportation Commission before July 1, 2004. This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount,

if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the commission if the project sponsor will request toll revenue within the subsequent 12 months. The project sponsor shall update this report as needed or requested by the commission. No funds shall be allocated by the commission for any project authorized by subdivision (c) until the project sponsor submits the initial project report, and the report is reviewed and approved by the commission.

If multiple project sponsors are listed for projects listed in subdivision (c), the commission shall identify a lead sponsor in coordination with all identified sponsors, for purposes of allocating funds. For any projects authorized under subdivision (c), the commission shall have the option of requiring a memorandum of understanding between itself and the project sponsor or sponsors that shall include any specific requirements that must be met prior to the allocation of funds provided under subdivision (c).

(f) The Metropolitan Transportation Commission shall annually assess the status of programs and projects and shall allocate a portion of funding made available under Section 30921 or 30958 for public information and advertising to support the services and projects identified in subdivisions (c) and (d). If an operating program or project cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 or if a program or project cannot be completed or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or the project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or to reassign all of the funds to another or an additional regional transit program or project within the same corridor. If a program or project does not meet the required performance measures, the commission shall give the sponsor a time certain to achieve the performance measures or have its funding reassigned.

(g) If the voters approve a toll increase pursuant to Section 30921, the authority shall within 24 months of the election date, include the projects in a long-range plan that are consistent with the commission's findings required by this section and Section 30914.5. The authority shall update its long-range plan as required to maintain its viability as a strategic plan for funding projects authorized by this section. The authority shall by January 1, 2007, submit its updated long-range plan to the transportation policy committee of each house of the Legislature for review.

(h) If the voters approve a toll increase pursuant to Section 30921, and if additional funds from this toll increase are available following the funding obligations of subdivisions (c) and (d), the authority may set aside a reserve to fund future rolling stock replacement to enhance the sustainability of the services enumerated in subdivision (d). The authority shall, by January 1, 2020, submit a 20-year toll bridge expenditure plan to the Legislature for adoption. This expenditure plan shall have, as its highest priority, replacement of transit vehicles purchased pursuant to subdivision (c).

SEC. 65. Section 30914.5 is added to the Streets and Highways Code, to read:

30914.5. (a) Prior to the allocation of revenue for transit operating assistance under subdivision (d) of Section 30914, the Metropolitan Transportation Commission shall adopt performance measures related to fare-box recovery, ridership, and other performance measures as needed. The performance measures shall be developed in consultation with the affected transit operators and the commission's advisory council.

(b) The Metropolitan Transportation Commission shall execute an operating agreement with the sponsors of the projects described in subdivision (d) of Section 30914. This agreement shall include, at a minimum, a fully funded operating plan that conforms to and is consistent with the adopted performance measures. The agreement shall also include a schedule of projected fare revenues or other operating revenues to indicate that the service is viable in the near-term and is expected to meet the adopted performance measures in future years. For any individual project sponsor, this operating agreement may include additional requirements, as determined by the commission, to be met prior to the allocation of transit assistance under subdivision (d) of Section 30914.

(c) Prior to the annual allocation of transit operating assistance funds by the Metropolitan Transportation Commission pursuant to subdivision (d) of Section 30914, project sponsors shall present an audited annual report to the commission that contains audited financial information, including an opinion of the independent auditors on the status and cost of the project and its compliance with the approved performance measures.

(d) The Metropolitan Transportation Commission shall adopt a regional transit connectivity plan by December 1, 2005. The connectivity plan shall be incorporated into the commission's Transit Coordination Implementation Plan pursuant to Section 66516.5 of the Government Code. The connectivity plan shall require operators to comply with the plan utilizing commission authority pursuant to Section 66516.5 of the Government Code. The commission shall consult with

the Partnership Transit Coordination Council in developing a plan that identifies and evaluates opportunities for improving transit connectivity and shall include, but not be limited to, the following components:

(1) A network of key transit hubs connecting regional rapid transit services to one another, and to feeder transit services. ''Regional rapid transit'' means long-haul transit service that crosses county lines, and operates mostly in dedicated rights-of-way, including freeway high-occupancy vehicle lanes, crossing a bridge, or on the bay. The identified transit hubs shall operate either as a timed transfer network or as pulsed hub connections, providing regularly scheduled connections between two or more transit lines.

(2) Physical infrastructure and right-of-way improvements necessary to improve system reliability and connections at transit hubs. Physical infrastructure improvements may include, but are not limited to, improved rail-to-rail transfer facilities, including cross-platform transfers, and intermodal transit improvements that facilitate rail-to-bus, rail-to-ferry, ferry-to-ferry, ferry-to bus, and bus-to-bus transfers. Capital improvements identified in the plan shall be eligible for funding in the commission's regional transportation plan.

(3) Regional standards and procedures to ensure maximum coordination of schedule connections to minimize transfer times between transit lines at key transit hubs, including, but not limited to, the following:

(A) Policies and procedures for improved fare collection.

(B) Enhanced trip-planning services, including Internet-based programs, telephone information systems, and printed schedules.

(C) Enhanced schedule coordination through the implementation of real-time transit-vehicle location systems that facilitate communication between systems and result in improved timed transfers between routes.

(D) Performance measures and data collection to monitor the performance of the connectivity plan.

The connectivity plan shall focus on, but not be limited to, feeder transit lines connecting to regional rapid transit services, and the connection of regional rapid transit services to one another. The connectivity plan shall be adopted following a Metropolitan Transportation Commission public hearing at least 60 days prior to adoption. The commission shall adopt performance measures and collect appropriate data to monitor the performance of the connectivity plan. The plan shall be evaluated every three years by the commission as part of the update to its regional transportation plan. No agency shall be eligible to receive funds under this section unless the agency is a participant operator in the commission's regional transit connectivity plan.

The provisions of this subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921, and the expenditures incurred by the Metropolitan Transportation Commission up to five hundred thousand dollars ($500,000) that are related to the requirements of this subdivision, including any study, shall be reimbursed from toll revenues identified in paragraph (33) of subdivision (c) of Section 30914.

(e) The TransLink Consortium, per the TransLink Interagency Participation Agreement, shall by July 1, 2007, develop a plan for an integrated fare program covering all regional rapid transit trips funded in full or in part by this section. ''Regional rapid transit'' means long-haul transit services that cross county lines, and operate mostly in dedicated rights-of-way, including freeway high-occupancy vehicle lanes, crossing a bridge, or on the bay. Interregional rail services, originating or terminating from outside the bay area, shall not be considered regional rapid transit. The purpose of the integrated fare program is to encourage greater use of the region's transit network by making it easier and less costly for transit riders whose regular commute involves multizonal travel and may involve the transfer between two or more transit agencies, including regional-to-regional and regional-to-local transfers. The integrated fare program shall include a zonal fare system for the sole purpose of creating a monthly zonal pass (monthly pass), allowing for unlimited or discounted fares for transit riders making a minimum number of monthly transit trips between two or more zones. The number of minimum trips shall be established by the plan. The integrated fare program shall not apply to fare structures that are not purchased on a monthly basis. For the purposes of these zonal fares, geographic zones shall be created in the bay area. To the extent practical, zone boundaries for overlapping systems shall be in the same places and shall correspond to the boundaries of the local transit service areas. A regional rapid transit zone may cover more than one local service area, or may subdivide an existing local service area. The monthly pass shall be created in at least the following two forms:

(1) For the use of interzonal regional rapid transit trips without local transit discounts.

(2) For the use of interzonal regional rapid transit trips with local transit discounts. The plan may recommend the elimination of existing transit pass arrangements to simplify the marketing of the monthly pass. The integrated fare program shall establish a monitoring program to evaluate the impact of the integrated fare program on the operating finances of the participating agencies. The integrated fare program shall be adjusted as necessary to ensure that the program does not jeopardize the viability of local or regional rapid transit routes impacted by the program, and to the extent feasible, provide an equitable revenue sharing

arrangement among the participating agencies. This subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921, and any expenditures related to the implementation of this subdivision incurred by the TransLink Consortium shall be reimbursed by toll revenues designated in paragraph (35) of subdivision (c) of Section 30914.

(f) The Metropolitan Transportation Commission (MTC) shall, by July 1, 2006, adopt a Bay Area Regional Rail Plan (plan) for the development of passenger rail services in the San Francisco Bay area over the short, medium, and long term. The plan shall formulate strategies to integrate passenger rail systems, improve interfaces with connecting services, expand the regional rapid transit network, and coordinate investments with transit-supportive land use. The plan shall be governed by a steering committee consisting of appointees from the Department of Transportation (Caltrans), the San Francisco Bay Area Rapid Transit District (BART), Caltrain, the National Railroad Passenger Corporation (Amtrak), the Capitol Corridor Joint Powers Authority, the Altamont Commuter Express, the California High-Speed Rail Authority, the Metropolitan Transportation Commission (MTC), the Sonoma-Marin Area Rail Transit District (SMART), the Santa Clara Valley Transportation Authority, the Solano Transportation Authority, and the owners of standard gauge rail. Congestion management agencies and other agencies as determined by the steering committee shall be invited as nonvoting members. Under policy guidance from the steering committee and with input from bay area transit agencies, Caltrain and BART shall provide day-to-day management and technical support for the development of this plan. The plan proposals shall be evaluated using performance criteria, including, but not limited to, transit-supportive land use and access, ridership, cost-effectiveness, regional network connectivity, and capital and operating financial stability. Additional performance criteria shall be developed as necessary. The plan shall include, but not be limited to, all of the following:

(1) Identification of issues in connectivity, access, capacity, operations and cost-effectiveness.

(2) Identification of opportunities to enhance rail connectivity and to maximize passenger convenience when transferring between systems. Up to five hundred thousand dollars ($500,000) of the funds described in paragraph (33) of subdivision (c) of Section 30914 may be expended by BART or Caltrain, or by both, to study the feasibility and construction of, an intermodal transfer hub at the Niles (Shinn Street) Junction.

(3) Recommendation of improvements to the interface with shuttles, buses, other rail systems, and other feeder modes.

(4) Identification of potential impacts on capacity constraints and operations on existing passenger and freight carriers.

(5) Identification of bottlenecks where added capacity could cost-effectively increase performance.

(6) Recommendation of potential efficiency improvements through economies of scale, such as through joint vehicle procurement and maintenance facilities.

(7) Recommendation of strategies to acquire right-of-way and station property to preserve future service options.

(8) Identification of potential capital and operating funding sources for proposed actions.

(9) Identification of locations where the presence of passenger rail could stimulate redevelopment and thereby direct growth to the urban core.

(10) Recommendation of technology-appropriate service expansion in specific corridors. Technologies to be considered include conventional rail transit modes, bus rapid transit, and emerging rail technologies. Identify phasing strategies for the implementation of rail services where appropriate.

(11) Examination of how recommendations would integrate with proposed high-speed rail to the Central Valley and southern California. Up to two million five hundred thousand dollars ($2,500,000) of the funds described in paragraph (33) of subdivision (c) of Section 30914 may be expended by BART or Caltrain, or by both, to study bay area access to the high-speed rail system. The High-Speed Rail Authority, or its successor, shall collaborate with the steering committee established in this subdivision in conducting this study, if funds are expended for the study pursuant to this paragraph.

(12) Recommendation of a governance strategy to implement and operate future regional rapid transit services.

This subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921. Any expenditures incurred by the Metropolitan Transportation Commission or the project sponsors identified in paragraph (33) of subdivision (c) of Section 30914 related to the requirements of this subdivision, including any study and administration, shall be appropriate charges against toll revenue to be reimbursed from toll revenues.

SEC. 66. Section 30915 of the Streets and Highways Code is amended to read:

30915. With respect to all construction and improvement projects specified in Sections 30913 and 30914, project sponsors and the department shall seek funding from all other potential sources, including, but not limited to, the State Highway Account and federal matching funds. The project sponsors and department shall report to the authority concerning the funds obtained under this section.

SEC. 67. Section 30916 of the Streets and Highways Code is amended to read:

30916. (a) The base toll rate for vehicles crossing the state-owned toll bridges within the geographic jurisdiction of the commission as of January 1, 2003, is as follows:

Number of Axles	Toll
Two axles	$ 1.00
Three axles	3.00
Four axles	5.25
Five axles	8.25
Six axles	9.00
Seven axles & more	10.50

(b) If the voters approve a toll increase, pursuant to Section 30921, commencing July 1, 2004, the base toll rate for vehicles crossing the bridges described in subdivision (a) is as follows:

Number of axles	Toll
Two axles	$ 2.00
Three axles	4.00
Four axles	6.25
Five axles	9.25
Six axles	10.00
Seven axles & more	11.50

(c) The authority shall increase the amount of the toll only if required to meet its obligations on any bonds or to satisfy its covenants under any bond resolution or indenture. The authority shall hold a public hearing before adopting a toll schedule reflecting the increased toll charge.

(d) Nothing in this section shall be construed to prohibit the adoption of either a discounted commute rate for two-axle vehicles or of special provisions for high-occupancy vehicles under terms and conditions prescribed by the authority in consultation with the department.

SEC. 68. Section 30917 of the Streets and Highways Code is repealed.

SEC. 69. Section 30917 is added to the Streets and Highways Code, to read:

30917. Pursuant to a special election in 1988 held in the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Solano, the voters approved a uniform toll charge of one dollar ($1) for class I vehicles crossing the

state-owned toll bridges within the geographic jurisdiction of the Metropolitan Transportation Commission. Except as provided in Section 30914, the revenue derived from that toll increase shall be used to finance capital outlay for bridge construction and major bridge improvements as is fiscally practicable.

SEC. 70. Section 30918 of the Streets and Highways Code is amended to read:

30918. It is the intention of the Legislature to maintain tolls on all of the bridges specified in Section 30910 at rates sufficient to meet any obligation to the holders of bonds secured by the bridge toll revenues. The authority shall retain authority to set the toll schedule as may be necessary to meet those bond obligations. The authority shall provide at least 30 days' notice to the transportation policy committee of each house of the Legislature and shall hold a public hearing before adopting a toll schedule reflecting the increased toll rate.

SEC. 71. Section 30919 of the Streets and Highways Code is amended to read:

30919. (a) Consistent with its adopted regional transportation plan, after the requirements for debt service on the outstanding toll bridge revenue bonds have been met, the Metropolitan Transportation Commission shall allocate the revenues identified in subdivision (b) of Section 30913 to eligible public entities and to the department.

(b) The revenues expended pursuant to paragraph (4) of subdivision (a) of Section 30914 shall be expended on rail extension and improvement projects designed to reduce vehicular traffic congestion on the San Francisco-Oakland Bay Bridge. Seventy percent of the revenues shall be expended on rail extensions and improvement projects in the Counties of Alameda and Contra Costa, including, but not limited to, extending the regional rail system in the Concord-Antioch, Fremont-San Jose, and the Bayfair-Livermore rail transit corridors. The remaining 30 percent shall be expended on rail extensions and improvement projects in the City and County of San Francisco and the Counties of San Mateo and Santa Clara.

(c) The Metropolitan Transportation Commission may commit to multiyear allocations and expenditures for projects over extended time periods to maximize funding opportunities and project progress.

SEC. 72. Section 30920 of the Streets and Highways Code is amended to read:

30920. The authority may issue toll bridge revenue bonds to finance any or all of the projects, including those specified in Sections 30913 and 30914, if the issuance of the bonds does not adversely affect the minimum amount of toll revenue proceeds designated in Section 30913 and in paragraph (4) of subdivision (a) of, and subdivision (b) of, Section 30914 for rail extension and improvement projects and transit projects

to reduce vehicular traffic. A determination of the authority that a specific project or projects shall have no adverse effect will be binding and conclusive in all respects.

SEC. 73. Section 30921 of the Streets and Highways Code is repealed.

SEC. 74. Section 30921 is added to the Streets and Highways Code, to read:

30921. (a) The toll rate for vehicles crossing the bridges described in Section 30916 shall not be increased to the rate described in subdivision (b) of Section 30916 prior to the availability of the results of a special election to be held in the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Solano to determine whether the residents of those counties and of the City and County of San Francisco approve a toll increase in the amount of one dollar ($1) per vehicle. The revenue derived from this toll increase shall be used to finance capital outlay for construction improvements, the acquisition of transit vehicles, transit operating assistance, and other improvement projects to reduce congestion and to improve travel options on the bridge corridors as is fiscally practicable.

(b) Notwithstanding any provision of the Elections Code, the board of supervisors of the City and County of San Francisco and of each of the counties described in subdivision (a) shall call a special election to be conducted in the City and County of San Francisco and in each of the counties that shall be consolidated with the March 2, 2004, primary election. The following question shall be submitted to the voters as Regional Measure 2 and stated separately in the ballot from state and local measures: ''Shall voters authorize a Regional Traffic Relief Plan that does the following:

(1) Directs revenues generated through the collection of bridge tolls to provide the following projects:

(A) Expand and extend BART.

(B) New transbay commuter rail crossing south of the San Francisco-Oakland Bay Bridge.

(C) Comprehensive Regional Express bus network.

(D) New expanded ferry service.

(E) Better connections between BART, buses, ferries, and rail.

(2) Approves a one dollar ($1) toll increase effective July 1, 2004, on all toll bridges in the bay area, except the Golden Gate Bridge?''

(c) The ballot pamphlet for the special election described in subdivision (b) shall include a detailed description of the Regional Traffic Relief Plan detailing the projects, services, and planning requirements set forth in subdivisions (c) and (d) of Section 30914 and subdivisions (d), (e), and (f) of Section 30914.5. The Metropolitan

Transportation Commission shall prepare this description of the Regional Traffic Relief Plan.

(d) The county clerks shall report the results of the special election to the authority. If a majority of all voters voting on the question at the special election vote affirmatively, the authority shall adopt the increased toll schedule to be effective July 1, 2004.

(e) If a majority of all the voters voting on the question at the special election do not approve the toll increase, the authority may by resolution resubmit the measure to the voters at a subsequent general election. If a majority of all of the voters vote affirmatively on the measure, the authority may adopt the toll increase and establish its effective date and establish the completion dates for all reports and studies required by Sections 30914, 30914.5, and 30950.3.

(f) The authority shall reimburse each county and city and county participating in the election for the incremental cost of submitting the measure to the voters. These costs shall be reimbursed from revenues derived from the tolls if the measure is approved by the voters, or, if the measure is not approved, from any bridge toll revenues administered by the authority.

(g) Except as provided in Section 30918, the toll rates contained in a toll schedule adopted by the authority pursuant to this section shall not be changed without statutory authorization by the Legislature.

SEC. 75. Section 30922 is added to the Streets and Highways Code, to read:

30922. Any action or proceeding to contest, question, or deny the validity of the toll increase provided for in this chapter, the financing of the transportation program contemplated by this chapter, the issuance of any bonds secured by those tolls, or any of the proceedings in relation thereto, shall be commenced within 60 days from the date of the election at which the toll increase is approved. After that date, the financing of the program, the issuance of the bonds, and all proceedings in relation thereto, including the adoption, approval, and collection of the toll increase, shall be held valid and incontestable in every respect.

SEC. 76. Section 30950 of the Streets and Highways Code is amended to read:

30950. For the purposes of this chapter, Chapter 4 (commencing with Section 30910), and Chapter 4.5 (commencing with Section 31000), ''the authority'' is the Bay Area Toll Authority, which is hereby created. The authority is a public instrumentality governed by the same board as that governing the Metropolitan Transportation Commission. The authority is, however, a separate entity from the Metropolitan Transportation Commission.

SEC. 77. Section 30950.1 of the Streets and Highways Code is amended to read:

30950.1. The authority shall adopt an annual budget. The members of the authority shall be compensated as determined by the authority and shall be reimbursed for necessary and reasonable expenses incurred in connection with performing authority duties. The authority shall pay all costs required by this section.

SEC. 78. Section 30950.2 of the Streets and Highways Code is amended to read:

30950.2. The authority is responsible for the programming, administration, and allocation of all toll revenues, except revenues from the seismic retrofit surcharge, from state-owned toll bridges within the geographic jurisdiction of the Metropolitan Transportation Commission. After completion of the seismic projects and payment or provision for the payment of all bonds issued for the seismic projects, the authority may assume responsibility for the programming, administration, and allocation of the revenue derived from the seismic retrofit surcharge, at which time those revenues shall be deposited in the Bay Area Toll Account.

SEC. 79. Section 30950.3 of the Streets and Highways Code is amended to read:

30950.3. (a) The authority shall prepare, adopt, and from time to time revise, a long-range plan for the completion of all projects within its jurisdiction, including those of the Regional Traffic Relief Plan.

(b) The authority shall give first priority to projects and expenditures that are deemed necessary by the department to preserve and protect the bridge structures.

SEC. 80. Section 30950.4 of the Streets and Highways Code is amended to read:

30950.4. All authority of the California Transportation Commission as to the bay area bridges is transferred to the authority.

SEC. 81. Section 30951 of the Streets and Highways Code is repealed.

SEC. 82. Section 30951 is added to the Streets and Highways Code, to read:

30951. The authority is authorized in its own name to do all acts necessary or convenient for the exercise of its powers under this division and the financing of projects, including, but not limited to, the following:

(a) To make and enter into contracts.

(b) To employ agents or employees.

(c) To acquire, construct, manage, maintain, lease, or operate any public facility or improvements.

(d) To sue and be sued in its own name.

(e) To issue bonds and otherwise to incur debts, liabilities, or obligations.

(f) To apply for, accept, receive, and disburse grants, loans, and other assistance from any agency of the United States of America or of the State of California.

(g) To invest any money not required for the immediate necessities of the authority, as the authority determines is advisable.

(h) To apply for letters of credit or other forms of financial guarantees in order to secure the repayment of bonds and to enter into agreements in connection with those letters of credit or financial guarantees.

SEC. 83. Section 30953 of the Streets and Highways Code is amended to read:

30953. Except for the revenues from the seismic retrofit surcharge, toll revenues and all other income derived from bridges pursuant to Chapter 4 (commencing with Section 30910) shall be deposited in the Bay Area Toll Account, which is hereby created.

SEC. 84. Section 30956 of the Streets and Highways Code is repealed.

SEC. 85. Section 30958 of the Streets and Highways Code is amended to read:

30958. After payments for debt service on outstanding bonds, and the costs for the operation and maintenance expenses set forth in Section 30952 are provided for, and after all direct operating costs of the authority are provided for, the authority may retain, for its cost in administering this article, an amount not to exceed 1 percent of the gross annual bridge revenues.

SEC. 86. Section 30960 of the Streets and Highways Code is amended to read:

30960. (a) The authority may issue both defeasance and future capital project bonds payable from the revenues of the tolls imposed on the bridges described in Section 30910. The bonds or commercial paper may be issued by the authority at any time, and from time to time, payable from the revenues from the tolls. The bonds or commercial paper shall be referred to as ''toll bridge revenue bonds.''

(b) The revenues from the tolls on the bridges described in Section 30910 shall be subject to a statutory lien in favor of the bondholders to secure all amounts due on the bonds and in favor of any provider of credit enhancement for the bonds to secure all amounts due to that provider with respect to those bonds, and the lien shall immediately attach to those toll revenues and be effective, binding, and enforceable against the authority, its successors, creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act, and the toll revenues shall remain subject to that lien until all bonds are paid in full or provision made therefor, and the bridges shall not become toll-free prior to that time.

(c) The liens on toll revenues created by this chapter shall be subject to expenditures for operation and maintenance of the bridges, including toll collection, unless those expenditures are otherwise provided for by statute.

(d) Interest on any bonds issued pursuant to this chapter shall at all times be free from state personal income tax and corporate income tax.

SEC. 87. Section 30961 of the Streets and Highways Code is amended to read:

30961. Toll bridge revenue bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by the authority by a majority vote of all members of the authority.

(a) The authority may from time to time issue bonds in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), for the purpose of constructing, improving, or equipping any of the bridges or for any of the purposes authorized by this chapter, Chapter 4 (commencing with Section 30910), or Chapter 4.5 (commencing with Section 31000). Operation of the bridges or any grouping or units thereof shall constitute an ''enterprise'' within the meaning of Section 54309 of the Government Code, and the authority shall constitute a ''local agency'' within the meaning of Section 54307 of the Government Code. Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code shall not apply to the issuance and sale of bonds pursuant to this chapter. Instead, the authority shall authorize the issuance of bonds by resolution, and that resolution shall specify all of the following:

(1) The purposes for which the bonds are to be issued.

(2) The maximum principal amount of the bonds.

(3) The maximum term for the bonds or commercial paper.

(4) The maximum rate of interest to be payable upon the bonds or commercial paper. That interest rate shall not exceed the maximum rate specified in Section 53531 of the Government Code. The rate may be either fixed or variable and shall be payable at the times and in the manner specified in the resolution.

(b) The authority shall keep full and complete accounts for toll revenues and expenses of the toll bridges and shall annually prepare balance sheets showing the financial condition of the entire toll bridge enterprise as well as toll revenues and operating costs for each toll bridge. The accounts and related reports shall be maintained and prepared in accordance with generally accepted accounting practices and shall be subject to an annual audit conducted by an independent certified public accountancy firm licensed to practice in the state.

SEC. 88. Section 31000 of the Streets and Highways Code is amended to read:

31000. The following definitions apply for purposes of this chapter:

(a) ''Account'' means the Toll Bridge Seismic Retrofit Account created pursuant to Section 188.10.

(b) ''Amenities'' means any of the following:

(1) A cable suspension bridge.

(2) A bicycle facility.

(3) A transbay terminal.

(c) ''Authority'' means the Bay Area Toll Authority.

(d) ''Bay area bridges'' means the state-owned toll bridges within the area of the geographic jurisdiction of the Metropolitan Transportation Commission.

(e) ''Department'' means the Department of Transportation.

(f) ''Seismic retrofit'' means all work completed by the department on the bay area bridges relating to the planning, design, and construction of improvements to, or replacement of, those bridges for the purpose of withstanding seismic forces, including, but not limited to, any environmental or traffic mitigation necessary for that work.

(g) ''Surcharge'' means the seismic retrofit surcharge imposed pursuant to Section 31010.

SEC. 89. Section 31010 of the Streets and Highways Code is amended to read:

31010. (a) There is hereby imposed a seismic retrofit surcharge equal to one dollar ($1) per vehicle for passage on the bay area bridges, except for vehicles that are authorized toll-free passage on these bridges.

(b) Funds generated by subdivision (a) may not be used to repay nontoll revenues committed to fund projects identified in paragraph (2) of subdivision (a) of Section 188.5. Following the date of the submission of the final report required in subdivision (d) of Section 188.5, funds generated pursuant to subdivision (a) that are in excess of those needed to meet the toll commitment as specified by paragraph (4) of subdivision (b) of Section 188.5, including annual debt service payments, if any, required to support the commitment, and other elements required to meet the obligations of the department's financing plan, shall be available to the authority for funding, consistent with Sections 30913 and 30914, the purposes and projects described in those sections. The department shall transfer to the authority on an annual basis the funds made available to the authority under this subdivision.

(c) (1) There shall be no increase in the seismic retrofit surcharge beyond the level identified in subdivision (a) for the purposes identified in paragraph (4) of subdivision (a) of Section 188.5, except that the department shall have the authority to increase the seismic retrofit surcharge for debt service purposes only if the bank finds and the Department of Finance confirms that both of the following apply:

(A) Circumstances exist that have resulted in a reduction in the funds generated by subdivision (a) so as to jeopardize the payment of debt service for which toll revenues are authorized.

(B) Bonds issued under Chapter 4.3 (commencing with Section 30950) shall not be impaired solely by action taken under this section, as evidenced by confirmation of the then existing ratings on those bonds, by the rating agencies then rating the bonds.

(2) The requirement for the funding described in subparagraph (B) of paragraph (1) shall not apply if the voters approve an increase in the toll rate pursuant to subdivision (b) of Section 30921.

(d) The term of the financing plan developed by the department under Section 31071, for the purposes of funding the projects described in Sections 30913 and 30914, is extended for a period of 30 years commencing on January 1, 2008.

(e) This section shall remain in effect only until the date that the California Transportation Commission notifies the Secretary of State that sufficient funds have been generated to meet the obligations identified in paragraph (4) of subdivision (b) of Section 188.5, and repayment of any outstanding debt secured by tolls, and as of that date is repealed. The California Transportation Commission shall provide the notice described in this subdivision upon making the determination set forth in this subdivision.

SEC. 90. Section 31071 of the Streets and Highways Code is amended to read:

31071. (a) The department may enter into financing agreements with the bank for the purpose of borrowing funds to finance or refinance the seismic retrofit project costs identified in paragraph (4) of subdivision (a) of Section 188.5. The bank may issue bonds for this purpose, pursuant to the authority granted to it under Chapter 5 (commencing with Section 63070) of Chapter 2 of Division 1 of Title 6.7 of the Government Code, and deposit the proceeds from the bonds into the account. The amount of borrowing may be increased to fund necessary reserves, capitalized interest, interim bonds, including, but not limited to, commercial paper, costs of issuance, and administrative, financial legal and incidental services related to the bonds. The department shall pursue the most cost-effective and efficient financing plan for the bridge work identified in paragraph (4) of subdivision (a) of Section 188.5.

(b) To the extent provided in the governing documents, each of the bonds issued under this section shall be payable from, and secured by, all or a portion of the toll surcharge revenue in the account and the assets in that account.

(c) Prior to the issuance of bonds payable from the toll surcharge, the bank shall confirm that bonds issued under Chapter 4.3 (commencing

with Section 30950) shall not be impaired solely by action taken under this section, as evidenced by confirmation of the then existing ratings on these bonds, by the rating agencies then rating the bonds. This requirement shall not apply if the voters approve an increase in the toll rate pursuant to subdivision (b) of Section 30921.

SEC. 91. Section 5205.5 of the Vehicle Code is amended to read:

5205.5. (a) For the purposes of implementing Section 21655.9, beginning July 1, 2000, and through December 31, 2003, the department, in consultation with the Department of the California Highway Patrol, shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive decals, labels, or other identifiers for vehicles that meet California's ultra-low emission vehicle (ULEV) standard for exhaust emissions and the federal ILEV evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, in a manner that clearly distinguishes them from other vehicles.

(b) For the purposes of implementing Section 21655.9, beginning January 1, 2004, and through December 31, 2007, the department shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive decals, labels, and other identifiers for vehicles that meet California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, in a manner that clearly distinguishes them from other vehicles.

(c) The department shall include a summary of the provisions of this section on each motor vehicle registration renewal notice, or on a separate insert, if space is available and the summary can be included without incurring additional printing or postage costs.

(d) The Governor may remove individual high-occupancy vehicle (HOV) lanes, or portions of those lanes, during periods of peak congestion from the ILEV access provisions provided in subdivisions (a) and (b), following a finding by the Department of Transportation as follows:

(1) The lane, or portion thereof, exceeds a level of service C, as discussed in subdivision (b) of Section 65089 of the Government Code.

(2) The operation or projected operation of the vehicles described in subdivisions (a) and (b) in these lanes, or portions thereof, will significantly increase congestion.

The finding also shall demonstrate the infeasibility of alleviating the congestion by other means, including, but not limited to, reducing the

use of the lane by noneligible vehicles, further increasing vehicle occupancy, or adding additional capacity.

(e) For purposes of subdivisions (a) and (b), the Department of the California Highway Patrol shall design and specify the placement of the decal, label, or other identifier on the vehicle. Each decal, label, or other identifier issued for a vehicle shall display a unique number, which number shall be printed on, or affixed to, the vehicle registration.

(f) If the Metropolitan Transportation Commission, serving as the Bay Area Toll Authority, grants toll-free and reduced-rate passage on toll bridges under its jurisdiction to any vehicle pursuant to Section 30102.5 of the Streets and Highways Code, it shall also grant the same toll-free and reduced-rate passage to vehicles displaying a valid ULEV or SULEV identifier issued by the department pursuant to subdivisions (a) and (b).

(g) 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 before January 1, 2008, deletes or extends that date.

SEC. 92. Section 5 of Chapter 898 of the Statutes of 1997 is amended to read:

Sec. 5. (a) Notwithstanding Article 2 (commencing with Section 33110) of Chapter 2 of Part 1 of Division 24 of the Health and Safety Code, the legislative body of the City and County of San Francisco may, by resolution, designate the authority or any successor entity or agency of the authority as the redevelopment agency with all of the rights, powers, privileges, immunities, authorities, and duties granted to a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, for the purpose of acquiring, using, operating, maintaining, converting, and redeveloping the property. Upon adoption of that resolution, the authority shall be considered a redevelopment agency for all purposes under state law, including, but not limited to, the purposes of Section 21090 of the Public Resources Code.

(b) Notwithstanding any state or local law, including, without limitation, Section 33111 of the Health and Safety Code, the board of directors of the authority may include individuals who are officers or employees of the City and County of San Francisco or of the San Francisco Redevelopment Agency and those individuals are not precluded, solely by virtue of their status as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency, from participating in decisions as members of the board of directors.

(c) Notwithstanding Section 1090 of the Government Code and Section C8.105 of Appendix C of the San Francisco Charter, officers and employees of the City and County of San Francisco or the San Francisco

Redevelopment Agency are not precluded, solely by virtue of their services as members of the board of directors, from participating in any decisions in their capacities as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency.

(d) Notwithstanding any other provision of law, the authority's employees, except the director and the deputy director, are subject to the same civil service provisions as the employees of the City and County of San Francisco.

(e) Notwithstanding any other provision of law, the authority shall follow the same competitive bidding procedures applicable to redevelopment agencies in California.

(f) Prior to the board of supervisor's approval of a redevelopment plan for the property, any contract to which the authority is a party worth more than one million dollars ($1,000,000) or with a term of 10 or more years shall require the approval of the Board of Supervisors of the City and County of San Francisco.

SEC. 93. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 716

An act to add Section 7104.1 to the Revenue and Taxation Code, and to amend Section 5 of Chapter 898 of the Statutes of 1997, relating to local government.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 7104.1 is added to the Revenue and Taxation Code, to read:

7104.1. Notwithstanding any other provision of law, the requirements imposed on cities and counties by subdivision (f) of Section 7104 shall not apply for any fiscal year in which the transfer of revenues from the General Fund to the Transportation Investment Fund is suspended pursuant to Article XIX B of the California Constitution and funds consequently are not made available for allocation to cities or counties pursuant to paragraphs (4) and (5) of subdivision (c) of Section 7104.

SEC. 2. Section 5 of Chapter 898 of the Statutes of 1997 is amended to read:

Sec. 5. (a) Notwithstanding Article 2 (commencing with Section 33110) of Chapter 2 of Part 1 of Division 24 of the Health and Safety Code, the legislative body of the City and County of San Francisco may, by resolution, designate the authority or any successor entity or agency of the authority as the redevelopment agency with all of the rights, powers, privileges, immunities, authorities, and duties granted to a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, for the purpose of acquiring, using, operating, maintaining, converting, and redeveloping the property. Upon adoption of that resolution, the authority shall be considered a redevelopment agency for all purposes under state law, including, but not limited to, the purposes of Section 21090 of the Public Resources Code.

(b) Notwithstanding any state or local law, including, without limitation, Section 33111 of the Health and Safety Code, the Board of Directors of the authority may include individuals who are officers or employees of the City and County of San Francisco or of the San Francisco Redevelopment Agency and those individuals are not precluded, solely by virtue of their status as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency, from participating in decisions as members of the Board of Directors.

(c) Notwithstanding Section 1090 of the Government Code and Section C8.105 of Appendix C of the San Francisco Charter, officers and employees of the City and County of San Francisco or the San Francisco Redevelopment Agency are not precluded, solely by virtue of their services as members of the Board of Directors, from participating in any decisions in their capacities as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency.

(d) Notwithstanding any other provision of law, the authority shall follow the same competitive bidding procedures applicable to redevelopment agencies in California.

(e) Prior to the Board of Supervisor's approval of a redevelopment plan for the property, any contract to which the authority is a party worth more than one million dollars ($1,000,000) or with a term of 10 or more years shall require the approval of the Board of Supervisors of the City and County of San Francisco.

CHAPTER 717

An act to add Section 14669.7 to the Government Code, relating to state property.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 14669.7 is added to the Government Code, to read:

14669.7. The Director of General Services may enter into an agreement with federal authorities to sell, lease, or exchange land at the Northern California Women's Facility, as described in subdivision (o) of Section 5003 of the Penal Code. The conditions of the sale, lease, or exchange shall be in the best interests of the state. If used for the incarceration of inmates, any facility located on this land shall utilize state employees.

CHAPTER 718

An act to add Section 10295.1 to the Public Contract Code, and to amend Sections 6487 and 7101 of, and to add Sections 6452.1, 6487.3, and 18510 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 10295.1 is added to the Public Contract Code, to read:

10295.1. (a) A state department or agency may not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, shall be regarded as a ''retailer engaged in

business in this state'' and shall be required to collect the California sales or use tax on all its sales into the state in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a).

(c) A state department or state agency is exempted from the provisions of subdivision (a) if the executive director, or his or her designee, of that state department or agency makes a written finding that the contract is necessary to meet a compelling state interest.

(d) For the purposes of this section:

(1) ''Affiliate of the vendor or contractor'' means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) ''Compelling state interest'' includes, but is not limited to, the following:

(A) Ensuring the provision of essential services.

(B) Ensuring the public health, safety and welfare.

(C) Responding to an emergency, as defined in Section 1102.

(3) ''State department or agency'' means every state office, department, division, bureau, board, commission and the California State University, but does not include the University of California, the Legislature, the courts, and any agency in the judicial branch of government.

SEC. 2. Section 6452.1 is added to the Revenue and Taxation Code, to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (b), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) ''Acceptable tax return'' means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), ''qualified use tax'' means the use tax imposed under this part, Section 35 of Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) ''Qualified use tax'' does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

(e) If a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's election to remit and to report qualified use tax on an acceptable tax return, the State Board of Equalization is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with Part 5 (commencing with Section 6451).

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18041).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.

(3) Notwithstanding this section becoming inoperative as described in paragraph (2), any provisions in this section or Section 18510 relating to collection activities attributable to qualified use taxes reported prior to the inoperative date of this section shall continue in the same manner as if this section were still operative.

SEC. 3. Section 6487 of the Revenue and Taxation Code is amended to read:

6487. (a) For taxpayers filing returns, other than a return filed pursuant to Section 6452.1, on other than an annual basis, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination

shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For taxpayers filing returns on an annual basis, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined.

(c) The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use, or other consumption of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use, or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536.

SEC. 4. Section 6487.3 is added to the Revenue and Taxation Code, to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a ''gross understatement of qualified used tax'' is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person's acceptable tax return. In the case of married individuals filing separate California personal

income tax returns, the total amount of qualified use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section ''acceptable tax return'' means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that latter date becomes inoperative, unless a later enacted statute extends the operation of this section.

SEC. 5. Section 7101 of the Revenue and Taxation Code is amended to read:

7101. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this part shall, except as provided in Section 6452.1, be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund.

SEC. 6. Section 18510 is added to the Revenue and Taxation Code, to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years on and after January 1, 2003, and ending on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.

CHAPTER 719

An act to amend Section 488.385 of the Code of Civil Procedure, to amend Section 10902 of the Revenue and Taxation Code, to amend Sections 1685, 4064, 5014, 5036, 5066, 6700.25, 9102.5, 9250, 9250.8, 9250.13, 9252, 9254, 9258, 9261, 9265, 9400.1, 9554, 9702, 11515, 11515.2, 12814.5, 14900, 14900.1, 14901, 14902, 38121, 38225.4, 38225.5, 38232, 38255, 38260, and 38265 of, to add Section 1678 to, and to repeal Section 38225.4 of, the Vehicle Code, and to amend Item No. 2720-001-0044 of the Budget Act of 2003, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 488.385 of the Code of Civil Procedure is amended to read:

488.385. (a) To attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, which is equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the appropriate department a notice of attachment, in the form prescribed by the appropriate department, which shall contain all of the following:

(1) The name and mailing address of the plaintiff.

(2) The name and last known mailing address of the defendant.

(3) The title of the court where the action is pending and the cause and number of the action.

(4) A description of the specific property attached.

(5) A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

(b) Upon presentation of a notice of attachment, notice of extension, or notice of release under this section for filing and tender of the filing fee to the appropriate department, the notice shall be filed and indexed. The fee for filing and indexing the notice is fifteen dollars ($15).

(c) Upon the request of any person, the department shall issue its certificate showing whether there is on file in that department on the date and hour stated therein any notice of attachment filed against the property of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is fifteen dollars ($15). Upon request, the department shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar ($1) per page.

(d) If property subject to an attachment lien under this section becomes a fixture (as defined in paragraph (41) of subdivision (a) of Section 9102 of the Commercial Code), the attachment lien under this section is extinguished.

SEC. 2. Section 10902 of the Revenue and Taxation Code is amended to read:

10902. (a) In the event of a constructive total loss, in which the repair value exceeds the market value of the vehicle less the anticipated salvage value, or a nonrepairable vehicle, or an unrecovered total loss, due to a theft, of a vehicle, the in-lieu fee portion of the vehicle license fee that has been paid, less any offset provided in Section 10754, shall be refunded to the current registered owner (the owner of the salvage value of the vehicle), or credited against the vehicle license fee owed on the owner's replacement vehicle. The amount refunded or credited shall be based upon one-twelfth of the annual in-lieu fee, less any offset provided by Section 10754, for each full month that remains until the registration expires.

(b) No refund or credit may be made pursuant to this section unless the vehicle owner has signed a declaration under penalty of perjury that he or she has not been cited or convicted of violating Section 23152 or 23153 of the Vehicle Code (relating to driving under the influence of alcohol or drugs) or Section 23103 as specified in Section 23103.5 of

that code (which involves a substitute for an original citation of driving under the influence) in connection with the owner's vehicle loss. If the owner has been cited under any of these code sections, the owner shall be entitled to the refund or credit upon presentation of either proof of dismissal of the citation or a finding of not guilty.

(c) The Department of Motor Vehicles shall charge to vehicle owners requesting a refund or credit pursuant to this section a service fee in the amount of fifteen dollars ($15) to cover the administrative costs of processing the request.

(d) In the case of a request for refund or credit with respect to a stolen vehicle, the vehicle owner may not be entitled to a refund or credit prior to 60 days from the date the theft of the vehicle is reported to the police. If a refund is received or a credit is applied to another vehicle and the stolen vehicle is subsequently recovered, the owner shall return the amount refunded or credited. If the owner receives a refund or credit, and the destroyed or stolen vehicle is scrapped and subsequently repaired by another person, the new owner shall pay the full vehicle license fee.

(e) The Department of Motor Vehicles shall adopt regulations for the administration of the refunds and credits provided by this section.

SEC. 3. Section 1678 is added to the Vehicle Code, to read:

1678. (a) Between January 1, 2004, and December 31, 2004, inclusive, the fee amounts set forth in Section 488.385 of the Code of Civil Procedure, Section 10902 of the Revenue and Taxation Code, and Sections 4604, 5014, 5036, 6700.25, 9102.5, 9250.8, 9250.13, 9252, 9254, 9258, 9261, 9265, 9702, 11515, 11515.2, 12814.5, 14900, 14900.1, 14901, 14902, 38121, 38225.4, 38225.5, 38232, 38255, 38260, and 38265 shall be the base fee amounts charged by the department.

(b) On January 1, 2005, and every January 1 thereafter, the department shall adjust the fees imposed under the sections listed in subdivision (a) by increasing each fee in an amount equal the increase in the California Consumer Price Index for the prior year, as calculated by the Department of Finance, with amounts equal to or greater than fifty cents ($0.50) rounded to the next highest whole dollar.

SEC. 4. Section 1685 of the Vehicle Code is amended to read:

1685. (a) In order to continue improving the quality of products and services it provides to its customers, the department, in conformance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, may establish contracts for electronic programs that allow qualified private industry partners to join the department in providing services that include processing and payment programs for vehicle registration and titling transactions.

(b) (1) The department may enter into contractual agreements with qualified private industry partners. There are the following three types of private industry partnerships authorized under this section:

(A) First-line business partner is an industry partner that receives data directly from the department and uses it to complete registration and titling activities for that partner's own business purposes.

(B) First-line service provider is an industry partner that receives information from the department and then transmits it to another authorized industry partner.

(C) Second-line business partner is a partner that receives information from a first-line service provider.

(2) The private industry partner contractual agreements shall include the following minimum requirements:

(A) Filing of an application and payment of an application fee, as established by the department.

(B) Submission of information, including, but not limited to, fingerprints and personal history statements, focusing on and concerning the applicant's character, honesty, integrity, and reputation as the department may consider necessary.

(C) Posting a bond in an amount consistent with Section 1815.

(3) The department shall, through regulations, establish any additional requirements for the purpose of safeguarding privacy and protecting the information authorized for release under this section.

(c) The director may establish, through the adoption of regulations, the maximum amount that a qualified private industry partner may charge its customers in providing the services authorized under subdivision (a).

(d) The department shall charge a three-dollar ($3) transaction fee for the information and services provided under subdivision (a). The private industry partner may pass the transaction fee to the customer, but the total charge to a customer may not exceed the amount established by the director under subdivision (c).

(e) All fees collected by the department pursuant to subdivision (d) shall be deposited in the Motor Vehicle Account. On January 1 of each year, the department shall adjust the fee in accordance with the California Consumer Price Index. The amount of the fee shall be rounded to the nearest whole dollar, with amounts equal to, or greater than, fifty cents ($0.50) rounded to the next highest whole dollar.

(f) The department shall adopt regulations and procedures that ensure adequate oversight and monitoring of qualified private industry partners to protect vehicle owners from the improper use of vehicle records. These regulations and procedures shall include provisions for qualified private industry partners to periodically submit records to the department, and the department shall review those records as necessary.

The regulations shall also include provisions for the dedication of department resources to program monitoring and oversight; the protection of confidential records in the department's files and databases; and the duration and nature of the contracts with qualified private industry partners.

(g) The department shall, annually, by January 10, provide a report to the Legislature that shall include all of the following information gathered during the calendar year immediately preceding the report date:

(1) Listing of all qualified private industry partners, including names and business addresses.

(2) Volume of transactions, by type, completed by business partners.

(3) Total amount of funds, by transaction type, collected by business partners.

(4) Total amount of funds received by the department.

(5) Detailed listing of funds expended from the Special Deposit Fund.

(6) Description of any fraudulent activities identified by the department.

(7) Evaluation of the benefits of the program.

(8) Recommendations for any administrative or statutory changes that may be needed to improve the program.

(h) Nothing in this section impairs or limits the authority provided in Section 4610 or 12155 of the Insurance Code.

SEC. 5. Section 4604 of the Vehicle Code is amended to read:

4604. (a) Except as otherwise provided in subdivision (d), prior to the expiration of the registration of a vehicle, if that registration is not to be renewed prior to its expiration, the owner of the vehicle shall file, under penalty of perjury, a certification that the vehicle will not be operated, moved, or left standing upon any highway without first making an application for registration of the vehicle, including full payment of all fees. The certification is valid until the vehicle's registration is renewed pursuant to subdivision (c).

(b) Each certification filed pursuant to subdivision (a) shall be accompanied by a filing fee of fifteen dollars ($15).

(c) (1) An application for renewal of registration, except when accompanied by an application for transfer of title to, or any interest in, the vehicle, shall be submitted to the department with payment of the required fees for the current registration year and without penalty for delinquent payment of fees imposed under this code or under Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code if the department receives the application prior to or on the date the vehicle is first operated, moved, or left standing upon any highway during the current registration year and the certification required pursuant to subdivision (a) was timely filed with the department.

(2) If an application for renewal of registration is accompanied by an application for transfer of title, that application may be made without incurring a penalty for delinquent payment of fees not later than 20 days after the date the vehicle is first operated, moved, or left standing on any highway if a certification pursuant to subdivision (a) was timely filed with the department.

(d) A certification is not required to be filed pursuant to subdivision (a) for any of the following:

(1) A vehicle on which the registration expires while being held as inventory by a dealer or lessor-retailer or while being held pending a lien sale by the keeper of a garage or operator of a towing service.

(2) A vehicle registered pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of Division 3.

(3) A vehicle described in Section 5004, 5004.5, 5004.6, or 5051, as provided in Section 4604.2. However, the registered owner may file a certificate of nonoperation in lieu of the certification specified in subdivision (a).

(4) A vehicle registered pursuant to Article 5 (commencing with Section 9700) of Chapter 6 if the registered owner has complied with subdivision (c) of Section 9706.

(e) Notwithstanding Section 670, for purposes of this section, a ''vehicle'' is a device by which any person or property may be propelled, moved, or driven upon a highway having intact and assembled its major component parts including, but not limited to, the frame or chassis, cowl, and floor pan or, in the case of a trailer, the frame and wheels or, in the case of a motorcycle, the frame, front fork, and engine. For purposes of this section, ''vehicle'' does not include a device moved exclusively by human power, a device used exclusively upon stationary rails or tracks, or a motorized wheelchair.

SEC. 6. Section 5014 of the Vehicle Code is amended to read:

5014. An application by a person other than a manufacturer or dealer for an identification plate for special construction equipment, cemetery equipment, special mobile equipment, logging vehicle, cotton trailer, or farm trailer as specified in Section 36109, a vehicle that is farmer-owned and used as provided in subdivision (b) of Section 36101, a motor vehicle that is farmer-owned and operated and used as provided in subdivision (a) of Section 36101, an automatic bale wagon operated as specified in subdivision (a) or (b) of Section 36102, or a farm trailer that is owned, rented, or leased by a farmer and is operated and used as provided in subdivision (b) of Section 36010, shall include the following:

(a) The true, full name and the driver's license or identification card number, if any, of the owner.

(b) A statement by the owner of the use or uses which he or she intends to make of the equipment.

(c) A description of the vehicle, including any distinctive marks or features.

(d) A photograph of the vehicle. Only one photograph of one piece of equipment shall be required to be attached to the application when identification plates are to be obtained for more than one piece of equipment, each of which is of the same identical type.

(e) Other information as may reasonably be required by the department to determine whether the applicant is entitled to be issued an identification plate.

(f) A service fee of fifteen dollars ($15) for each vehicle. The plates shall be renewed between January 1 and February 4 every five calendar years, commencing in 1986. Any part of the year of the first application constitutes a calendar year. An application for renewal of an identification plate shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

SEC. 7. Section 5036 of the Vehicle Code is amended to read:

5036. A service fee of fifteen dollars ($15) shall be paid for the issuance or transfer of a special license plate for motorized bicycles, as defined in Section 406. Publicly-owned motorized bicycles are exempt from the fee.

SEC. 7.5. Section 5066 of the Vehicle Code is amended to read:

5066. (a) The department shall, in conjunction with the California Highway Patrol, design and make available for issuance pursuant to this article the California memorial license plate. Notwithstanding Section 5060, the California memorial license plate may be issued in a combination of numbers or letters, or both, as requested by the applicant for the plates. Any person described in Section 5101 may, upon payment of the additional fees set forth in subdivision (b), apply for and be issued a set of California memorial license plates.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, retention, or transfer of the California memorial license plates authorized pursuant to this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates or retention of the plates, if renewal is not required, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Sections 5106

and 5108 shall be deposited proportionately in the funds described in subdivision (c).

(c) The department shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of California memorial license plates as follows:

(1) Eighty-five percent in the Antiterrorism Fund, which is hereby created in the General Fund.

(A) Upon appropriation by the Legislature, one-half of the money in the fund shall be allocated by the Controller to the Office of Criminal Justice Planning to be used solely for antiterrorism activities. The office may not use more than 5 percent of the funds appropriated to it for administrative purposes.

(B) Upon appropriation by the Legislature in the annual Budget Act or in another statute, one-half of the money in the fund shall be used solely for antiterrorism activities.

(2) Fifteen percent in the California Memorial Scholarship Fund, which is hereby established in the General Fund. Moneys deposited in this fund shall be administered by the Scholarshare Investment Board, and shall be available, upon appropriation in the annual Budget Act or in another statute, for distribution or encumbrance by the board pursuant to Article 21.5 (commencing with Section 70010) of Chapter 2 of Part 42 of the Education Code.

(d) The department shall deduct its costs to administer, but not to develop, the California memorial license plate program. The department may utilize an amount of money, not to exceed fifty thousand dollars ($50,000) annually, derived from the issuance, renewal, transfer, and substitution of California memorial license plates for the continued promotion of the California memorial license plate program of this section.

(e) ''Antiterrorism activities'' means activities related to the prevention, detection, and emergency response to terrorism that are undertaken by state and local law enforcement, fire protection, and public health agencies. The funds provided for these activities, to the extent that funds are available, shall be used exclusively for purposes directly related to fighting terrorism. Eligible activities include, but are not limited to, hiring support staff to perform administrative tasks, hiring and training additional law enforcement, fire protection, and public health personnel, response training for existing and additional law enforcement, fire protection, and public health personnel, and hazardous materials and other equipment expenditures.

(f) Beginning January 1, 2007, and each January 1 thereafter, the department shall determine the number of currently outstanding and valid California memorial license plates. If that number is less than

7,500 in any year, then the department shall no longer issue or replace those plates.

SEC. 8. Section 6700.25 of the Vehicle Code is amended to read:

6700.25. (a) The department shall provide a nonresident daily commuter with external vehicle identification indicia and a corresponding identification card, upon application therefor and completion of the form required by Section 6700.3, which indicia and card shall be valid for a period of two years. A vehicle shall be exempt from Sections 4000.4 and 6700 when operated with the requisite indicia and otherwise in accordance with this chapter.

(b) Subdivision (a) applies only to residents and vehicles of residents of a contiguous state which has enacted laws that provide reciprocal privileges to California residents who are employed in the contiguous state. Subdivision (a) does not apply to residents of foreign countries.

(c) Subdivision (a) applies only to the vehicles specified in paragraph (1) of subdivision (a) of Section 6700.2.

(d) Subdivision (a) applies only to vehicles which are licensed in a foreign jurisdiction that are used to commute into California to a destination within a corridor in this state that parallels the border between California and the contiguous state and extends not more than 35 air miles into California from the border at any point. The privilege accorded by subdivision (a) shall be revoked by operation of the vehicle for commuter purposes beyond that 35-mile corridor.

(e) The department shall charge a service fee of fifteen dollars ($15) for each vehicle.

SEC. 9. Section 9102.5 of the Vehicle Code is amended to read:

9102.5. (a) In lieu of all other fees which are specified in this code, except fees for duplicate plates, certificates, or cards, a fee of fifteen dollars ($15) shall be paid for the registration and licensing of any privately owned schoolbus, as defined in Section 545, which is either of the following:

(1) Owned by a private nonprofit educational organization and operated in accordance with the rules and regulations of the Department of Education and the Department of the California Highway Patrol exclusively in transporting school pupils, or school pupils and employees, of the private nonprofit educational organization.

(2) Operated in accordance with the rules and regulations of the Department of Education and the Department of the California Highway Patrol exclusively in transporting school pupils, or school pupils and employees, of any public school or private nonprofit educational organization pursuant to a contract between a public school district or nonprofit educational organization and the owner or operator of the schoolbus.

This section does not apply to any schoolbus which is operated pursuant to any contract which requires the public school district or nonprofit educational organization to pay any amount representing the costs of registration and weight fees unless and until the contract is amended to require only the payment of an amount representing the fee required by this section.

(b) When a schoolbus under contract and registered pursuant to subdivision (a) is to be temporarily operated in such a manner that it becomes subject to full registration fees specified in this code, the owner may, prior to that operation, as an alternative to the full registration, secure a temporary permit to operate the vehicle in this state for any one or more calendar months. The permit shall be posted upon the windshield or other prominent place upon the vehicle, and shall identify the vehicle to which it is affixed. When so affixed, the permit shall serve as indicia of full registration for the period designated on the permit. Upon payment of the fees specified in Section 9266.5, the department may issue a temporary permit under this section.

(c) Notwithstanding any other provision, any schoolbus used exclusively to transport students at or below the 12th-grade level to or from any school, for an education-related purpose, or for an activity sponsored by a nonprofit organization shall be deemed to be a schoolbus for the purposes of this section and shall pay a fee of fifteen dollars ($15) in lieu of all other fees which are specified in this code, except fees for duplicate plates, certificates, or cards.

(d) This section does not apply to a schoolbus, operated to transport persons who are developmentally disabled, as defined by the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code), to or from vocational, prevocational, or work training centers sponsored by the State Department of Developmental Services.

SEC. 10. Section 9250 of the Vehicle Code is amended to read:

9250. (a) A registration fee of thirty-one dollars ($31) shall be paid to the department for the registration of every vehicle or trailer coach of a type subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) The registration fee imposed under this section applies to all vehicles described in Section 5004, whether or not special identification plates are issued to that vehicle.

(c) Trailer coaches are subject to the fee provided in subdivision (a) for each unit of the trailer coach.

(d) This section applies to all of the following:

(1) The initial or original registration, on or after January 1, 2004, of any vehicle not previously registered in this state.

(2) The renewal of registration of any vehicle for which the registration period expires on or after January 1, 2004, regardless of whether a renewal application was mailed to the registered owner prior to January 1, 2004.

(3) Any renewal of a registration that expired on or before December 31, 2003, but for which the fees are not paid until on or after January 1, 2004.

SEC. 11. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of three dollars ($3) shall be paid at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) In addition to the fee required under subdivision (a), upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 shall pay a fee of six dollars ($6).

SEC. 12. Section 9250.13 of the Vehicle Code is amended to read:

9250.13. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of six dollars ($6) shall be paid at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the fee required under paragraph (1), fee, upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 shall pay a fee of six dollars ($6).

(b) The money realized pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

SEC. 13. Section 9252 of the Vehicle Code is amended to read:

9252. (a) In addition to the registration fee specified in Section 9250 and any weight fee, there shall be paid a service fee of fifteen dollars ($15) for the registration within this state of every vehicle purchased new outside this state or previously registered outside this state. If the vehicle has been registered and operated in this state during

the same registration year in which application for registration is made, a fee of fifteen dollars ($15) shall be paid.

(b) This section does not apply to vehicles registered as fleet vehicles under Article 4 (commencing with Section 8050) of Chapter 4, except upon application for a certificate of ownership.

SEC. 14. Section 9254 of the Vehicle Code is amended to read:

9254. A service fee of fifteen dollars ($15) shall be paid to the department for a certificate of ownership issued without registration of the vehicle.

SEC. 15. Section 9258 of the Vehicle Code is amended to read:

9258. A fee of fifteen dollars ($15) shall be paid to the department for each one-trip permit issued pursuant to Section 4003.

SEC. 16. Section 9261 of the Vehicle Code is amended to read:

9261. (a) A service fee of fifteen dollars ($15) shall be paid for an identification plate issued pursuant to Section 5014. Publicly owned special construction equipment, cemetery equipment, special mobile equipment, logging vehicles, and implements of husbandry are exempt from the service charge.

(b) A service fee of fifteen dollars ($15) shall be paid for an identification plate issued pursuant to Section 5016.5.

(c) Upon application for the transfer of interest of an owner in a piece of equipment, vehicle, or implement of husbandry identified pursuant to Section 5014, the transferee shall pay a fee of fifteen dollars ($15).

(d) A fee of fifteen dollars ($15) shall be paid upon the renewal of an identification plate issued pursuant to Section 5014 or 5016.5.

SEC. 17. Section 9265 of the Vehicle Code is amended to read:

9265. Upon application for duplicates or substitutes as permitted under this code, the following fees shall be paid:

(a) For a duplicate certificate of ownership or registration card or equipment identification card	$15
(b) For any duplicate license plates, except environmental license plates, or substitute plates, or equipment identification plate for the same vehicle	15

SEC. 17.5. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) (1) In addition to any other required fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

(2) The weight of a vehicle issued an identification plate pursuant to an application under Section 5014, and the weight of an implement of husbandry as defined in Section 36000, shall not be considered when

calculating, pursuant to this section, the declared gross vehicle weight of a towing commercial motor vehicle that is owned and operated exclusively by a farmer or an employee of a farmer in the conduct of agricultural operations.

(3) Tow trucks that are utilized to render assistance to the motoring public or to tow or carry impounded vehicles shall pay fees in accordance with this section, except that the fee calculation shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck:

Gross Vehicle Weight Range	Fee
10,001–15,000	$ 257
15,001–20,000	353
20,001–26,000	435
26,001–30,000	552
30,001–35,000	648
35,001–40,000	761
40,001–45,000	837
45,001–50,000	948
50,001–54,999	1,039
55,000–60,000	1,173
60,001–65,000	1,282
65,001–70,000	1,398
70,001–75,000	1,650
75,001–80,000	1,700

(b) The fees specified in subdivision (a) apply to (1) an initial or original registration occurring on or after December 31, 2001, to December 30, 2003, inclusive, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) the renewal of registration of a commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001, to December 30, 2003, inclusive.

(c) (1) For (A) an initial or original registration occurring on or after December 31, 2003, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more, and (B) the renewal of registration of a commercial motor vehicle operated either singly or in combination, with a declared

gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2003, there shall be paid fees as follows:

Gross Vehicle Weight Range	Weight Code	Fee
10,001–15,000	A	$ 332
15,001–20,000	B	447
20,001–26,000	C	546
26,001–30,000	D	586
30,001–35,000	E	801
35,001–40,000	F	937
40,001–45,000	G	1,028
45,001–50,000	H	1,161
50,001–54,999	I	1,270
55,000–60,000	J	1,431
60,001–65,000	K	1,562
65,001–70,000	L	1,701
70,001–75,000	M	2,004
75,001–80,000	N	2,064

(2) For the purpose of obtaining ''revenue neutrality'' as described in Sections 1 and 59 of Senate Bill 2084 of the 1999–2000 Regular Session (Chapter 861 of the Statutes of 2000), the Director of Finance shall review the final 2003–04 Statement of Transactions of the State Highway Account. If that review indicates that the actual truck weight fee revenues deposited in the State Highway Account do not total at least seven hundred eighty-nine million dollars ($789,000,000), the Director

of Finance shall instruct the department to adjust the schedule set forth in paragraph (1), but not to exceed the following fee amounts:

Gross Vehicle Weight Range	Weight Code	Fee
10,001–15,000	A	$ 354
15,001–20,000	B	482
20,001–26,000	C	591
26,001–30,000	D	746
30,001–35,000	E	874
35,001–40,000	F	1,024
40,001–45,000	G	1,125
45,001–50,000	H	1,272
50,001–54,999	I	1,393
55,000–60,000	J	1,571
60,001–65,000	K	1,716
65,001–70,000	L	1,870
70,001–75,000	M	2,204
75,001–80,000	N	2,271

(d) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program Fee of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(e) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, one hundred twenty- two dollars ($122) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of the State Highway Account in the State Transportation Fund. One hundred twenty-two dollars ($122) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

(f) (1) The department, in consultation with the Department of the California Highway Patrol, shall design and make available a set of distinctive weight decals that reflect the declared gross combined weight or gross operating weight reported to the department at the time of initial registration, registration renewal, or when a weight change is reported to the department pursuant to 9406.1. A new decal shall be issued on each renewal or when the weight is changed pursuant to Section 9406.1. The decal for a tow truck that is subject to this section shall reflect the gross vehicle weight rating or weight code.

(2) The department may charge a fee, not to exceed ten dollars ($10), for the department's actual cost of producing and issuing each set of decals issued under paragraph (1).

(3) The weight decal shall be in sharp contrast to the background and shall be of a size, shape, and color that is readily legible during daylight hours from a distance of 50 feet.

(4) Each vehicle subject to this section shall display the weight decal on both the right and left sides of the vehicle.

(5) A person may not display upon a vehicle a decal issued pursuant to this subdivision that does not reflect the declared weight reported to the department.

(6) Notwithstanding subdivision (e) or any other provision of law, the moneys collected by the department under this subdivision shall be deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund.

(7) This subdivision shall apply to vehicles subject to this section at the time of an initial registration, registration renewal, or reported weight change that occur on or after July 1, 2004.

SEC. 18. Section 9554 of the Vehicle Code is amended to read:

9554. (a) (1) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is fifteen dollars ($15) and applies only to the last transfer.

(2) A penalty shall be added on any application for renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period of more than 10 days to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) This subdivision applies to the renewal of registration for vehicles with expiration dates on or before December 31, 2002.

(b) Penalties specified in paragraphs (1), (2), and (3) of this subdivision shall be computed as provided in Section 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is fifteen dollars ($15) and applies only to the last transfer. A penalty shall be added on any application for a renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due.

(1) (A) For a delinquency period of 10 days or less, the penalty is ten dollars ($10).

(B) For a delinquency period of more than 10 days, to and including 30 days, the penalty is fifteen dollars ($15).

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is thirty dollars ($30).

(D) For a delinquency period of more than one year, to and including two years, the penalty is fifty dollars ($50).

(E) For a delinquency period of more than two years, the penalty is one hundred dollars ($100).

(2) The penalty on the weight fee and the vehicle license fee shall be computed after the weight fee as provided in Section 9400 or 9400.1 plus the vehicle license fee specified in Section 10751 of the Revenue and Taxation Code have been added together as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) Weight fees not reported and not paid within 20 days, as required by Section 9406, shall be assessed a penalty on the difference in the weight fee, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(4) This subdivision applies to the renewal of registration for vehicles with expiration dates on or after January 1, 2003.

SEC. 19. Section 9702 of the Vehicle Code is amended to read:

9702. An additional fee of fifteen dollars ($15) shall be charged for each application for partial year registration, or renewal thereof, whenever a person pays the fee under Section 9400 or 9400.1, as provided in Section 9700.

SEC. 20. Section 11515 of the Vehicle Code is amended to read:

11515. (a) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15), to the department. An occupational licensee of the department may submit a certificate of license plate destruction in

lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department.

(e) Prior to sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) A salvage certificate issued under this section shall include a statement that the seller and any subsequent sellers that transfer

ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who fails to make the disclosure described in paragraph (1) shall be subject to a civil penalty of not more than five hundred dollars ($500).

(3) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages.

SEC. 21. Section 11515.2 of the Vehicle Code is amended to read:

11515.2. (a) Whenever an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days after receipt of title by the insurer, free and clear of all liens, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a nonrepairable vehicle certificate for the vehicle.

(b) Whenever the owner of a nonrepairable vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a nonrepairable vehicle certificate for the vehicle.

(c) Whenever a nonrepairable vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department.

(d) Whenever a nonrepairable vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days of the loss, forward the properly endorsed certificate of

ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of the fifteen dollars ($15) to the department.

(e) Prior to sale or disposal of a nonrepairable vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed nonrepairable vehicle certificate and deliver it to the purchaser within 10 days after payment in full for the nonrepairable vehicle and shall also comply with Section 5900. The department shall accept the endorsed nonrepairable vehicle certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle that has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a nonrepairable vehicle.

(g) A nonrepairable vehicle certificate shall be conspicuously labeled with the words ''NONREPAIRABLE VEHICLE'' across the front of the certificate.

(h) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

SEC. 22. Section 12814.5 of the Vehicle Code is amended to read:

12814.5. (a) The director may establish a program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. Pursuant to that program, the department may renew by mail driver's licenses for licensees not holding a probationary license, and whose records, for the two years immediately preceding the determination of eligibility for the renewal, show no notification of a violation of subdivision (a) of Section 40509, a total violation point count not greater than one as determined in accordance with Section 12810, no suspension of the driving privilege pursuant to Section 13353.2, and no refusal to submit to or complete chemical testing pursuant to Section 13353 or 13353.1.

(b) The director may terminate the renewal by mail program authorized by this section at any time the department determines that the program has an adverse impact on traffic safety.

(c) No renewal by mail shall be granted to any person who is 70 years of age or older.

(d) The department shall charge a fee of twenty-four dollars ($24) for each noncommercial license renewal and thirty-four dollars ($34) for each commercial license or noncommercial firefighter license renewal granted pursuant to subdivision (a) which expires on the fifth birthday following the date of the application.

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior five-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for five-year periods.

SEC. 23. Section 14900 of the Vehicle Code is amended to read:

14900. (a) Upon application for an original class C or M driver's license, there shall be paid to the department a fee of twenty-four dollars ($24) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

(b) In addition to the application fee specified in subdivision (a), a person who fails to successfully complete the driving skill test on the first attempt shall be required to pay an additional fee of five dollars ($5) for each additional driving skill test administered under that application.

(c) The fee specified in subdivision (b) shall be collected in conjunction with any application submitted on or after July 1, 2003.

SEC. 24. Section 14900.1 of the Vehicle Code is amended to read:

14900.1. (a) Except as provided in Sections 15250.6 and 15255.1, upon application for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid to the department a fee of twenty-four dollars ($24) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

(b) In addition to the application fee specified in subdivision (a), a person who fails to successfully complete the driving skill test on the first attempt shall be required to pay an additional fee of five dollars ($5) for each additional driving skill test administered under that application.

(c) The fee specified in subdivision (b) shall be collected in conjunction with any application submitted on or after July 1, 2003.

SEC. 25. Section 14901 of the Vehicle Code is amended to read:

14901. Upon an application for a duplicate driver's license or for a change of name on a driver's license, there shall be paid the department a fee of nineteen dollars ($19).

SEC. 26. Section 14902 of the Vehicle Code is amended to read:

14902. (a) Except as otherwise provided in subdivision (b) of this section, subdivision (c) of Section 13002, and subdivision (c) of Section

14900, upon an application for an identification card there shall be paid to the department a fee of twenty dollars ($20).

(b) An original or replacement senior citizen identification card issued pursuant to subdivision (b) of Section 13000 shall be issued free of charge.

(c) All fees received pursuant to this section shall be deposited in the Motor Vehicle Account.

SEC. 27. Section 38121 of the Vehicle Code is amended to read:

38121. (a) Prior to the expiration of the identification of an off-highway motor vehicle, if that identification is not to be renewed prior to its expiration, the owner of the vehicle shall file, under penalty of perjury, a certification that the vehicle will not be operated, used, or transported on public property or private property in a manner so as to subject the vehicle to identification during the subsequent identification period without first making an application for identification of the vehicle, including full payment of all fees. The certification of nonoperation is valid until the identification is renewed under subdivision (c).

(b) Each certification of nonoperation filed pursuant to subdivision (a) shall be accompanied by a filing fee of fifteen dollars ($15).

(c) An application for renewal of identification, whether or not accompanied by an application for transfer of title to, or any interest in, the vehicle, shall be submitted to the department with payment of the required fees for the current identification period and without penalty for delinquent payment of fees imposed under this code if the department receives the application on or before the date the vehicle is first operated, used, or transported on public property or private property in a manner so as to subject the vehicle to identification and certification of nonoperation required pursuant to subdivision (a).

(d) A certification of nonoperation is not required to be filed pursuant to subdivision (a) for a vehicle on which the identification expires while being held as inventory by a dealer or lessor-retailer.

SEC. 28. Section 38225.4 of the Vehicle Code, as added by Section 6 of Chapter 1004 of the Statutes of 1994, is repealed.

SEC. 29. Section 38225.4 of the Vehicle Code, as added by Section 3 of Chapter 1197 of the Statutes of 1994, is amended to read:

38225.4. In addition to the service fees specified in subdivision (a) of Section 38225, as amended by Section 6 of Chapter 964 of the Statutes of 1992, a fee of three dollars ($3) shall be paid at the time of issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this section in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon

appropriation by the Legislature, for expenditure to offset the costs of maintaining the uniformed field strength of the Department of the California Highway Patrol.

SEC. 30. Section 38225.5 of the Vehicle Code is amended to read:

38225.5. In addition to the service fees specified in Section 38225, a fee of three dollars ($3) shall be paid at the time of issuance or renewal of identification of off-highway vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this section in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

SEC. 31. Section 38232 of the Vehicle Code is amended to read:

38232. A special fee of fifteen dollars ($15) shall be paid to the department for the issuance of a special transportation identification device issued pursuant to Section 38088 and shall be deposited in the Motor Vehicle Account in the Transportation Tax Fund. The fee is in lieu of the fees provided in Section 38225.

SEC. 32. Section 38255 of the Vehicle Code is amended to read:

38255. Upon application for transfer of ownership or any interest of an owner, or legal owner in or to any off-highway motor vehicle identified under this division, there shall be paid the following fees:

(a) For a transfer by the owner	$15
(b) For a transfer by the legal owner	$15
(c) When application is presented showing a transfer by both the owner and legal owner	$15

SEC. 33. Section 38260 of the Vehicle Code is amended to read:

38260. Upon application for a duplicate ownership certificate or identification certificate, or a duplicate or substitute identification plate or device, or any other tabs, stickers, or devices, there shall be paid a fee in the amount of fifteen dollars ($15).

SEC. 34. Section 38265 of the Vehicle Code is amended to read:

38265. (a) The penalty for delinquency in respect to any transfer shall be fifteen dollars ($15), and shall apply only to the last transfer.

(b) The penalty for delinquency in respect to the fees imposed by Sections 38225 and 38230 shall be equal to one-half the fee after it has been computed.

SEC. 35. Notwithstanding any other provision of law, any additional moneys collected by the department as a result of the amendments made to Section 9400.1 of the Vehicle Code by Section 17.5 of this act may not be used for the purposes described in subdivision (b) of Section 1 of Article XIX of the California Constitution.

SEC. 36. The Legislature finds and declares that the changes to the fee schedule made in Section 9400.1 by Section 17.5 of this act are for the purpose of obtaining ''revenue neutrality'' as described in Sections 1 and 59 of Senate Bill 2084 of the 1999–2000 Regular Session (Chapter 861 of the Statutes of 2000).

SEC. 37. Item No. 2720-001-0044 of the Budget Act of 2003 is amended to read:

2720–001–0044—For support of Department of the California Highway patrol, payable from the Motor Vehicle Account, State Transportation Fund		1,106,297,000
Schedule:		
(1) 10–Traffic Management	1,065,766,000	
(2) 20–Regulation and Inspection . . .	134,586,000	
(3) 30–Vehicle Ownership Security .	30,217,000	
(4) 40.01–Administration	145,848,000	
(5) 40.02–Distributed Administration	–145,848,000	
(6) Reimbursements	–63,309,000	
(8) Amount payable from the State Highway Account (Item 2720–001–0042)	–43,787,000	
(9) Amount payable from the Motor Carrier Safety Improvement Fund (Item 2720–001–0293)	–1,190,000	
(10) Amount payable from the California Motorcyclist Safety Fund (Item 2720–001–0840)	–1,573,000	
(11) Amount payable from the Federal Trust Fund (Item 2720–001–0890)	–12,077,000	

(12) Amount payable from the Hazardous Substance Account, Special Deposit Fund (Item 2720–001–0942)	–208,000
(13) Amount payable from the Asset Forfeiture Account, Special Deposit Fund (Item 2720–011–0942)	–2,087,000

SEC. 38. 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 720

An act to amend Section 1808.21 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 1808.21 of the Vehicle Code is amended to read:

1808.21. (a) Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22 or 1808.23.

(b) Release of any mailing address or part thereof in any record of the department may be restricted to a release for purposes related to the reasons for which the information was collected, including, but not limited to, the assessment of driver risk, or ownership of vehicles or vessels. This restriction does not apply to a release to a court, a law enforcement agency, or other governmental agency, or a person who has been issued a requester code pursuant to Section 1810.2.

(c) Any person providing the department with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20, subdivision (a) of Section 415.30, and Section 416.90 of the Code of Civil Procedure at the mailing address.

(d) (1) Any registration or driver's license record of a person may be suppressed from any other person, except those persons specified in subdivision (a), if the person requesting the suppression submits either of the following:

(A) A certificate or identification card issued to the person as a program participant by the Secretary of State pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code.

(B) Verification acceptable to the department that he or she has reasonable cause to believe either of the following:

(i) That he or she is the subject of stalking, as specified in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(ii) That there exists a threat of death or great bodily injury to his or her person, as defined in Section 12022.7 of the Penal Code.

(2) Upon suppression of a record, each request for information about that record shall be authorized by the subject of the record or verified as legitimate by other investigative means by the department before the information is released.

(e) (1) The suppression of a record pursuant to a verification under subparagraph (B) of paragraph (1) of subdivision (d) shall occur for one year after approval by the department. Not less than 60 days prior to the date the suppression of the record would otherwise expire, the department shall notify the subject of the record of its impending expiration. The suppression may be continued for two additional periods of one year each if a letter is submitted to the department stating that the person continues to have a reasonable cause to believe that he or she is the subject of stalking or that there exists a threat of death or great bodily injury as described in subparagraph (B) of paragraph (1) of subdivision (d). The suppression may be additionally continued at the end of the second one-year period by submitting verification acceptable to the department. The notification described in this subdivision shall instruct the person of the method to reapply for record suppression.

(2) The suppression of a record made in accordance with the submission of a certificate or identification card under subparagraph (A) of paragraph (1) of subdivision (d) shall occur for four years following the submission of the certificate or identification card described in this paragraph. The suppression may be continued for an additional four-year

period, and for subsequent four-year periods, upon the submission of a current certificate or identification card described in this paragraph.

(f) For the purposes of subdivisions (d) and (e), ''verification acceptable to the department'' means recent police reports, court documentation, or other documentation from a law enforcement agency.

SEC. 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 721

An act to add Section 6363.8 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6363.8 is added to the Revenue and Taxation Code, to read:

6363.8. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption that are furnished or served by any nonprofit veteran's organization at a social or other gathering conducted by it or under its auspices, if the purpose in furnishing or serving the meals and food products is to obtain revenue for the functions and activities of the organization and the revenue obtained from furnishing or serving the meals and food products is actually used in carrying on those functions and activities.

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

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first

day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 722

An act to amend Section 6988 of, and to repeal Section 6989 of, of the Food and Agricultural Code, relating to advisory boards.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6988 of the Food and Agricultural Code is amended to read:

6988. The secretary, upon consultation with the pome and stone fruit tree, nut tree, and grapevine nursery industry, shall appoint a board to assist and advise him or her concerning the implementation of this article.

(a) Membership on the board shall consist of 11 representatives, a majority of whom are licensed producers of pome, stone, nut, and grape nursery stock, but also users and a public member as follows:

(1) Two each from the stone fruit (including almonds), pome fruit, and nut (other than almond) industries.

(2) Four from the grape industry.

(3) One public representative.

(b) Board members shall represent all areas of the state involved in the production of pome and stone fruit trees, nut trees, and grapevines.

(c) The members of the board shall serve for fixed terms of up to two years. The secretary, upon nomination by the industry, may appoint a member for three consecutive terms. The secretary shall reappoint no more than eight of the then-current members of the board within a two-year period.

(d) The board shall meet at least twice a year. The chair or the secretary may call any other meeting when it is deemed necessary by one or both of them. Each member shall be allowed per diem and mileage in accordance with Department of Personnel Administration rules for attending any meeting of the board.

(e) The board shall review and make recommendations to the secretary concerning the ongoing operations of the department and the University of California pertaining to this article. This shall include advice on fiscal expenditure, assessments needed to cover costs, and proposals concerning the development of planting materials.

SEC. 2. Section 6989 of the Food and Agricultural Code is repealed.

CHAPTER 723

An act to amend Sections 8169.6, 14669.15, 14669.16, and 14957 of, and to add Section 14672.100 to, the Government Code, relating to public works, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 8169.6 of the Government Code is amended to read:

8169.6. (a) In furtherance of the Capitol Area Plan, the objectives of Resolution Chapter 131 of the Statutes of 1991, and the legislative findings and declarations contained in Chapter 193 of the Statutes of 1996, relative to the findings by the Urban Land Institute, the director may purchase, exchange, or otherwise acquire real property and construct facilities, including any improvements, betterments, and related facilities, within the jurisdiction of the Capitol Area Plan in the City of Sacramento pursuant to this section. The total authorized scope of the project shall consist of approximately 1,400,000 gross square feet of office space on state-owned land in the Capitol area in downtown Sacramento on Block 204 (bounded by 7th, 8th, O, and P Streets) or Block 203 (bounded by 7th, 8th, N, and O Streets), or both of those blocks. The project will include associated parking onsite and in a parking garage to be constructed on Block 266 (bounded by 8th, 9th, Q, and R Streets). The project cost shall include the cost of rehabilitation of the Heilbron House currently located on Block 204, and the project cost may include the cost of relocation of the Heilbron House.

(b) (1) The department may contract for the lease, lease-purchase, lease with an option to purchase, acquisition, design, design-build, construction, deconstruction, construction management, and other services related to the design and construction of the office and parking facilities. If the director selects design-build as the method of delivery, the department shall use the method of design-build authorized by clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) of Section 14661. The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3) to finance all costs associated with the

acquisition, design, and construction of office and parking facilities for the purposes of this section. The State Public Works Board and the department may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized by the project are not sold, the Department of General Services shall commit a sufficient amount of its support budget to repay any outstanding loans. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans are repaid either through the proceeds from the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold may equal, but shall not exceed, the cost of land, planning, preliminary plans, working drawings or concept drawings, performance criteria, construction, deconstruction, furnishings, equipment, construction management and supervision, other costs relating to the design and construction of the facilities, exercising any purchase option, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and the establishment of a reasonable construction reserve fund to ensure that the funds are available in the event future augmentations are needed to complete the facilities authorized by this section. If the construction reserve funds are not needed to complete construction, they shall be used to repay the future debt payments.

(3) Authorized costs of the facilities for planning, concept drawings or preliminary plans, working drawings, demolition, construction, and other costs shall not exceed three hundred ninety-one million dollars ($391,000,000). Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized under this paragraph by up to 10 percent of the amount authorized.

(4) The net present value of the cost to acquire and operate the facilities authorized by subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of comparable consolidated office space over the same time period. The department shall perform this analysis and shall obtain interest rates, discount rates, and Consumer Price Index figures from the Treasurer. For purposes of this analysis, the department shall compare the cost of acquiring and operating the proposed facilities with the amount saved from not having to pay the cost of leasing and operating an equivalent amount of comparable consolidated office space that would no longer need to be leased.

(5) The department is authorized and directed to execute and deliver any and all leases, contracts, agreements, or other documents necessary or advisable to consummate the sale of bonds or otherwise effectuate the financing of the project described in this section.

(6) The State Public Works Board shall not itself be deemed a lead or responsible agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for any activities under the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3). This paragraph does not exempt the department from the requirements of the California Environmental Quality Act. This paragraph is declarative of existing law.

SEC. 2. Section 14669.15 of the Government Code is amended to read:

14669.15. (a) (1) The Director of General Services may enter into one or more agreements to acquire, construct, purchase, lease, lease-purchase, lease-purchase finance, or lease with an option to purchase, with an initial option purchase price that exceeds two million dollars ($2,000,000), for the purpose of providing approximately 226,100 net usable square feet of office and related space and 136,000 net usable square feet of parking in a suburban location in the San Diego region.

(2) In connection with the selection and acquisition of a lease, lease-purchase, lease-purchase finance, or lease with an option to purchase, which shall be collectively referred to for purposes of this section as a ''lease'' or ''leases,'' the department shall advertise and award the lease or leases in accordance with subdivision (b) of Section 14669 to the lowest responsible bidder offering to provide a building that meets the state's requirements.

(b) (1) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3) to finance the acquisition of the facilities authorized in subdivision (a). The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized for the projects are not sold, the Department of General Services shall adjust the Building Rental Account of the Service Revolving Fund by an amount sufficient to repay any loans made by the Pooled Money Investment Account. It is the intent of the Legislature that this commitment be included in future Budget Acts until outstanding loans from the Pooled Money Investment Account are repaid either through the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including land, construction, furnishings and equipment, preliminary plans and working drawings, construction management and supervision, and other costs relating to the design and construction of the facilities,

exercising any purchase option, and any additional sums necessary to pay interim and permanent financing costs and costs to issue these bonds. The additional amount may include interest and a reasonable required reserve fund.

(3) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings, and construction shall not exceed forty-five million dollars ($45,000,000) for the suburban facility.

(4) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized pursuant to this subdivision by up to 10 percent of the amount specifically authorized.

(c) Notwithstanding Section 13340, funds derived from the interim and permanent financing or refinancing of the facilities specified in this section are hereby continuously appropriated without regard to fiscal years for these purposes.

(d) The net present value of the cost to acquire and operate the facilities authorized in subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of office space, including the present facilities, over the same time period. The Department of General Services, in performing this analysis, shall obtain interest rates, discount rates, and the consumer price index figures from the Treasurer.

(e) The director shall not enter into any agreement to acquire facilities, as specified in subdivision (a), any sooner than 45 days after notification, including the information specified in subdivision (d), to the Chairperson of the Joint Legislative Budget Committee. It is the intent of the Legislature that the Joint Legislative Budget Committee hold a hearing on the pending agreement.

SEC. 3. Section 14669.16 of the Government Code is amended to read:

14669.16. (a) Notwithstanding any other provision of law, the Director of General Services may purchase, exchange, or otherwise acquire real property and construct facilities including any improvements, betterments, and related facilities in the City of San Diego. The total authorized scope of the project shall consist of approximately 241,000 net usable square feet of new state-owned office space in the City of San Diego in the general vicinity of Ash, Union, ''A,'' State, and Front Streets. This development shall include, but not be limited to, the financing, planning, acquisition, construction, deconstruction, equipping, and furnishing of new state office buildings and associated child care and parking facilities, and any betterments, improvements, and facilities related to the development. The department may contract for the lease, lease-purchase, lease with an option to purchase, acquisition, design, design-build, construction,

deconstruction, construction management, and other services related to the design and construction of the office, child care, and parking facilities. The development shall comply with state policies related to sustainability and architectural excellence in public buildings.

(b) (1) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3) to finance the acquisition, design, and construction of the facilities authorized in subdivision (a). The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313 or any other lawfully available source including, but not limited to, the General Fund. In the event the bonds authorized for the project are not sold, the Department of General Services shall commit a sufficient amount of its support budget to repay any outstanding loans. It is the intent of the Legislature that this commitment be included in future Budget Acts until outstanding loans are repaid either through the sale of bonds or from an appropriation.

(2) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including land, construction, deconstruction, furnishings and equipment, preliminary plans or concept drawings, working drawings, performance criteria, construction management and supervision, and other costs relating to the design and construction of the facilities, exercising any purchase option, and any additional sums necessary to pay interim and permanent financing costs and costs to issue these bonds. The additional amount may include interest and the establishment of a reasonable construction reserve fund to ensure that the funds are available in the event future augmentations are needed to complete the facilities authorized in subdivision (a). If these construction funds are not needed to complete the construction, they shall be used to repay the future debt payments.

(3) Authorized costs of the facilities, including planning, land acquisition, preliminary plans or concept drawings, working drawings, deconstruction, construction, and other costs shall not exceed eighty-one million dollars ($81,000,000).

(c) In connection with the development or any agreement for any work or expenses in connection with the development, the Director of General Services may use any funds lawfully available to him or her in order to complete the development.

(d) It is in the best interest of the people of the state to consolidate state offices in the City of San Diego. If the director selects design-build as the method of delivery, the department shall use the method of

design-build authorized by clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) of Section 14661.

(e) The director may form a voluntary advisory committee composed of representatives designated by the City of San Diego and any other individuals designated by the director. The design advisory committee's functions shall be defined by the director, be in the best interest of the state, and comply with all applicable laws.

(f) The department is authorized and directed to execute and deliver any and all leases, contracts, agreements, or other documents necessary or advisable to consummate the sale of bonds or otherwise effectuate the financing of the project described in subdivision (a).

SEC. 4. Section 14672.100 is added to the Government Code, to read:

14672.100. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of the Youth Authority, may lease real property appurtenant to or part of the Ione Youth Facility as designated by the Department of the Youth Authority, which real property located in the County of Amador comprises the easements known as the Preston Ditch, Henderson Reservoir, Preston Reservoir, Preston Forebay, certain water rights with a diversion point on Sutter Creek, unused land at the Ione Youth Facility, and other pipelines and facilities leased to the County of Amador as lessee in the document entitled ''Agreement for Wastewater Management Plan'' dated March 22, 1978, which interests have been assigned to the Amador Regional Sanitation Authority, a joint powers agency comprised of the County of Amador and the Cities of Amador City and Sutter Creek. The new lease shall be for a term not to exceed 30 years and at the rate of one dollar ($1) per year, to the Amador Regional Sanitation Authority for its continued use as a wastewater delivery and disposal system. The lease shall contain the terms and conditions for wastewater disposal and other matters to which the parties agree.

(b) The lease shall provide that the property shall be leased ''as is'' and that the state shall have no liability for repairs, rehabilitation, or other improvements. It shall provide that the lessee, Amador Regional Sanitation Authority, shall operate the leased property pursuant to the terms of the lease under those terms and conditions, as deemed to be in the best interest of the state.

(c) The lease described in this section shall be exempt from the requirements of Division 13 (commencing with Section 2100) of the Public Resources Code.

(d) The Department of General Services shall be reimbursed for its cost related to the lease, including, but not limited to, any survey costs, title transfer fees, administrative costs, and department staff time.

(e) The Legislature finds and declares that the lease of the described portion of the Ione Youth Facility and appurtenant real property to the Amador Regional Sanitation Authority for use as a wastewater delivery and disposal system pursuant to this section is for a statewide public purpose.

SEC. 5. Section 14957 of the Government Code is amended to read:

14957. (a) The Division of Architecture Revolving Fund in the State Treasury is continued in existence and is retitled the Architecture Revolving Fund. With the approval of the Department of Finance, and except as otherwise specified in this section, there shall be transferred to, or deposited in, the fund all money appropriated, contributed, or made available from any source, including sources other than state appropriations, for expenditure on work within the powers and duties of the Department of General Services with respect to the construction, alteration, repair, and improvement of state buildings, including, but not limited to, services, new construction, major construction and equipment, minor construction, maintenance, improvements, and equipment, and other building and improvement projects, as authorized by the state agency for which an appropriation is made or, as to funds from sources other than state appropriations, as may be authorized by written agreement between the contributor or contributors of funds and the Department of General Services, when approved by the Department of Finance.

(b) Money from state sources transferred to, or deposited in, the fund for major construction shall be limited to the amount necessary based on receipt of competitive bids. Money transferred for this purpose shall be upon approval of the Department of Finance. Any amount available, in the state appropriation, which is in excess of the amount necessary based on receipt of competitive bids, shall be immediately transferred to the credit of the fund from which the appropriation was made.

(c) Money in the fund also may be used, upon approval of the Department of Finance, to finance the cost of any construction projects within the powers and duties of the Department of General Services for which the federal government will contribute a partial cost thereof, provided, written evidence has been received from a federal agency that money has been appropriated by Congress and the federal government will pay to the state the amount specified upon the completion of construction of the project. The Director of General Services may approve plans, specifications and estimates of cost, and advertise for and receive bids on projects in anticipation of the receipt of written evidence from a federal agency.

(d) Money so transferred or deposited is available for expenditure by the Department of General Services for the purposes for which

appropriated, contributed, or made available, without regard to fiscal years.

Notwithstanding Section 13340, special fund moneys in the Division of Architecture Revolving Fund, are continuously appropriated to the Department of General Services for these purposes.

CHAPTER 724

An act to amend Section 7507.9 of the Business and Professions Code, relating to collateral recovery.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. If personal effects or other personal property, not covered by a security agreement, are contained in or on collateral at the time it is recovered, the effects shall be removed from the collateral subject to the security interest, a complete and accurate inventory shall be made, and the personal effects shall be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession.

(a) The date and time the inventory is made shall be indicated and shall be signed by the repossession agency registrant or employee who performs the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

(1) Deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(2) Combustibles shall be inventoried and noted as ''disposed of, dangerous combustible,'' and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as ''disposed of, health hazard,'' and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least 60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee.

(d) The inventory shall include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering the personal effects and an itemization of all personal effects removal and storage charges that will be made by the repossession agency. The inventory shall also include the following statement: ''Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED.''

(e) The inventory shall be provided to a debtor not later than 48 hours after the recovery of the collateral, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of the collateral.

(2) The 48-hour period encompasses a Saturday or Sunday and a postal holiday, the inventory shall be provided no later than 96 hours after the recovery of the collateral.

(3) Inventory resulting from repossession of a yacht, motorhome, or travel trailer is such that it shall take at least four hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of the collateral. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of the collateral.

(f) Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor shall be removed from the collateral and inventoried pursuant to this section. If the plates are not claimed by the debtor within 60 days, they shall be effectively destroyed and the licensee shall, within 30 days thereafter, notify the Department of Motor Vehicles of their effective destruction on a form promulgated by the chief which has been approved as to form by the Director of the Department of Motor Vehicles.

(g) The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

(h) The debtor may waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the notices required by this section and signs a statement that he or she has received all the property.

(i) If personal effects or other personal property not covered by a security interest are to be released to someone other than the debtor, the repossession agency may request written authorization to do so from either the debtor or the legal owner.

(j) The inventory shall be a confidential document. A licensee shall only disclose the contents of the inventory under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue the order.

(2) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(3) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the contents of the inventory may be disclosed.

SEC. 2. It is the intent of the Legislature that nothing in this act restricts the ability of a licensed repossession agency to provide the legal owner of the collateral with a condition report, provided that the condition report does not include the inventory of personal effects or that any information regarding personal effects is redacted.

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 725

An act to amend Section 5440 of, and to add Section 5442.13 to, the Business and Professions Code, relating to transportation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 5440 of the Business and Professions Code is amended to read:

5440. Except as otherwise provided in this article, no advertising display may be placed or maintained on property adjacent to a section of a freeway that has been landscaped if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway.

SEC. 2. Section 5442.13 is added to the Business and Professions Code, to read:

5442.13. (a) Notwithstanding any other provision of this chapter, Section 5440 shall not prohibit an advertising display in the City of Los Angeles by a not-for-profit educational academy that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, if all of the following conditions are met:

(1) The exception provided by this section is limited to only one advertising display.

(2) The site of the academy is located immediately adjacent to State Highway Routes 10 and 110 in the City of Los Angeles.

(3) The academy's curriculum focuses on providing arts and entertainment business education.

(4) The advertising display is constructed on the roof of the academy's facility.

(5) The advertising display meets the requirements set forth in Sections 5405 and 5408.

(6) Placement or maintenance of the advertising display does not require the immediate trimming, pruning, topping, or removal of trees located on a state highway right-of-way to provide visibility to the advertising display, unless done as part of the normal landscape maintenance activities that would have been undertaken without regard to the placement of the display.

(7) Revenues accruing to the academy from the advertising display are used exclusively for the acquisition, operation, and improvement of the academy.

(b) An advertising display erected pursuant to this section shall not advertise products or services that are directed at an adult population, including, but not limited to, alcohol, tobacco, gambling, or sexually explicit material.

(c) If an advertising display erected pursuant to this section is removed for purposes of a transportation project undertaken by the department, the display owner shall be entitled to relocate that advertising display with no compensation for the removal or relocation,

and the relocation shall be limited to a site on the property of the academy specified in subdivision (a).

(d) An advertising display erected pursuant to this section shall not cause a reduction in federal aid highway funds, as provided in Section 131 of Title 23 of the United States Code.

(e) If the academy specified in subdivision (a) closes or otherwise ceases to operate, the advertising display permitted under this section shall no longer be authorized and shall be removed from the property of the academy.

(f) Notwithstanding Section 5412, if the property on which the academy specified in subdivision (a) is sold, the seller shall remove the billboard from the property without compensation before title to the property is transferred to the buyer.

(g) The academy specified in subdivision (a) shall prepare an audit of the revenues generated by the advertising display authorized under this section that includes, but is not limited to, the total revenues generated from the display, the amount of revenues received by the academy, and the expenditures and uses of the revenue. The audit shall be submitted to the Controller and the Legislature on or before January 1, 2007, and every four years thereafter.

(h) The academy specified in subdivision (a) shall comply with the provisions of the City of Los Angeles regulation designated as Section 12.21A 7 (*l*) of the Los Angeles Municipal Code. The requirements of this subdivision shall be waived if the City of Los Angeles fails to implement, comply with, and make a determination pursuant to the provisions of Section 12.21A7 (*l*) of the Los Angeles Municipal Code on or before January 1, 2005.

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 726

An act to amend Sections 24001, 24011, 46013.1, and 62582 of, and to add Section 32501.5 to the Food and Agricultural Code, and to amend Section 110815 of the Health and Safety Code, relating to agriculture.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

SECTION 1. Section 24001 of the Food and Agricultural Code is amended to read:

24001. For the purposes of this chapter:

(a) ''Event'' means any public horse show, competition (including cutting horse competitions, endurance riding competitions, competitive trail competitions, gymkhanas, and any other competition as determined by the secretary by regulation), or sale, in which money, goods, or services are exchanged for the right to compete for a single set of placings leading to points or awards at the show or competition, or to permit a horse to be consigned for sale. ''Event'' does not include any of the following:

(1) Those competitions subject to the jurisdiction of the California Horse Racing Board.

(2) Sales consisting solely of racing stock.

(3) A rodeo related competition including both rough stock and timed performance competitions when held apart from a horse show.

(4) Roping club events when held apart from a horse show.

(5) Cattle team pennings when held apart from a horse show.

(6) Barrel racing when held apart from a horse show.

(7) Parade horse competitions.

(8) Public horse shows and public horse competitions that do not last longer than one day and whose total cumulative fees to enter into any one or all classes do not exceed four dollars and ninety-nine cents ($4.99), unless otherwise prescribed by the secretary by regulation. ''Grounds fees,'' ''stall fees,'' or any other fee composed of money, goods, or services, which is assessed to permit competitors or consignors to enter into an event are considered a part of this total cumulative fee.

(b) ''Event manager'' means the person in charge of an event, including the person responsible for registering the event with the department, and the person responsible for the assessment, collection, and remittance of fees. ''Event manager'' includes horse show secretaries and managers, competitive event managers, and horse sale managers and sale owners.

(c) ''Horse'' means and includes all horses, mules, and asses.

(d) ''Licensed veterinarian'' means any person licensed as a veterinarian by the State of California.

(e) ''Prohibited substance'' is any stimulant, depressant, tranquilizer, anesthetic, including any local anesthetic, sedative analgesic, corticosteroid, anabolic steroid, or agent that would sore a horse, which

could affect the performance, soundness, or disposition of a horse, or any drug regardless of how harmless or innocuous it might otherwise be that could interfere with the detection of any prohibited substance. It also includes any metabolite or derivative of any prohibited substance.

(f) ''NSAIDs'' are nonsteroidal anti-inflammatory drugs.

(g) ''Therapeutic administration'' means the administration of a drug or medicine that is necessary for the treatment of an illness or injury diagnosed by a licensed veterinarian. The administration of a prescription drug or medicine shall only be as given or prescribed by the licensed veterinarian. The administration of a nonprescription drug or medicine shall be in accordance with the directions on the manufacturer's label.

(h) ''Exempt medications'' are oral or topical medications containing prohibited substances determined by the secretary to be exempt from this chapter when administered therapeutically.

(i) ''Public'' horse shows, competitions, or sales are those events that permit a person to enter or consign a horse for sale in exchange for money, goods, or services. Any club or group that permits people to join, enter into competition, or consign a horse for sale in exchange for money, goods, or services, is ''public'' for the purposes of this chapter.

(j) ''Stimulant or depressant'' means any medication that stimulates or depresses the circulatory, respiratory, or central or peripheral nervous system.

(k) To ''sore'' means to apply an irritating or blistering agent internally or externally for the purpose of affecting the performance, soundness, or disposition of a horse.

(*l*) ''Trainer'' means any person who has the responsibility for the care, training, custody, or performance of a horse, including, but not limited to, any person who signs any entry blank of any public horse show, competition, or sale, whether that person is an owner, rider, agent, coach, adult, or minor.

SEC. 2. Section 24011 of the Food and Agricultural Code is amended to read:

24011. A horse exhibited at an event that receives a prohibited substance or any NSAID for which a maximum detectable plasma level has been established in Section 24011.5, within 48 hours prior to any withdrawal time established by or pursuant to this chapter, shall not be eligible for show, competition, or sale, unless the following requirements have been met and the facts requested are submitted to the secretary in writing:

(a) Medication shall be therapeutic and necessary for treatment of an illness or injury.

(b) A horse shall be withdrawn from a show or competition for a period of not less than 24 hours after a prohibited substance is

administered, unless the secretary determines a different withdrawal period for a specific prohibited substance or class of substances. A horse shall be withdrawn from a public sale for a period of not less than 72 hours after a prohibited substance or NSAID is administered. The withdrawal period for anabolic steroids is 90 days after administration.

(c) The medication shall be administered by a licensed veterinarian, the trainer, or owner.

(d) Medication shall be identified as to the amount, strength, and mode of administration.

(e) The statement shall include the date and time of administration of the medication.

(f) The horse shall be identified by its name, age, sex, color, and entry number.

(g) The statement shall contain the diagnosis of the attending veterinarian and reason for administering the medication.

(h) The statement shall be signed by the person administering the medication.

(i) The statement shall be filed with the event manager of the public horse show or competition or general manager of the horse sale within one hour after administration or one hour after the event manager of the event returns to duty, if administration is at a time other than during show or sale hours.

(j) The statement shall be signed by the event manager or his or her designated representative and time of receipt recorded on the statement by the event manager or his or her designated representative.

If the chemical analysis of the sample taken from a horse so treated indicates the presence of a prohibited substance and all the requirements of this section have been fully complied with, the information contained in the medication report and any other relevant evidence shall be considered at any hearing provided under this chapter in determining whether any provision of this chapter has been violated.

SEC. 3. Section 32501.5 is added to the Food and Agricultural Code, to read:

32501.5. There is within the Department of Food and Agriculture the Milk and Dairy Food Safety Branch.

SEC. 4. Section 46013.1 of the Food and Agricultural Code is amended to read:

46013.1. (a) Every person engaged in this state in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production of products sold as organic, and retailers that are engaged in the processing, as defined by the NOP, of products sold as organic, shall register with the agricultural commissioner in the county of principal operation prior to the first sale of the product. All processors of organic agriculturally derived products that are not

required to be registered as outlined in subdivision (b) must register with the secretary. Each registrant must annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the county agricultural commissioner in any county in which the registrant operates.

(b) Every person engaged in this state in the processing or handling of processed products pursuant to Section 110460 of the Health and Safety Code, and pet food pursuant to Section 18653, and cosmetics pursuant to Section 111795 of the Health and Safety Code, including processors of alcoholic beverages, fish and seafood, shall register with the State Director of Health Services.

(c) Registration pursuant to this section shall be on a form either provided by the secretary or approved by the secretary and shall be valid for a period of one calendar year from the date of validation by the secretary or county agricultural commissioner of the completed registration form.

(d) The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic and the names and registration numbers of those persons for whom they sell product as applicable.

(2) (A) For producers, a map showing the precise location and dimensions of the facility or farm where the products are produced. The map shall also describe the boundaries of the production area and all adjacent land uses, shall assign field numbers to distinct fields or management units, and shall describe the size of each field or management unit.

(B) When the registrant has not had control of the property being registered for at least 36 months, documentation shall be provided from previous owners or managers that shows the 36-month land use history. When the registrant is not the owner, documentation shall be provided from the owner granting permission for the parcel to be registered as organic by the registrant.

(3) Sufficient information, under penalty of perjury, to enable the secretary or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with this act.

(4) The names of all certification organizations or governmental entities, if any, providing organic certification to them.

(5) In the case of producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium, growing area, irrigation water or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of

application, and the total amount applied in each calendar year, for at least the applicable time periods specified in this act.

(e) The registration form shall include a separate ''public information sheet'' or its equivalent that shall include:

(1) The name and address of the registrant.

(2) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic.

(3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to the NOP and this act.

(f) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of product sold as organic in the calendar year that precedes the date of registration or, if no sales were made in the preceding year, then based on the expected sales during the 12-calendar months following the date of registration. Unless specified elsewhere the fee is based according to the following schedule:

Gross Sales			Registration Fee
$ 0	–	4,999	$ 25
$ 5,000	–	10,000	$ 50
$ 10,001	–	25,000	$ 75
$ 25,001	–	50,000	$ 100
$ 50,001	–	100,000	$ 175
$ 100,001	–	250,000	$ 300
$ 250,001	–	500,000	$ 450
$ 500,001	–	1,000,000	$ 750
$ 1,000,001	–	2,500,000	$ 1,000
$ 2,500,001	–	5,000,000	$ 1,500
$ 5,000,001	–	15,000,000	$ 2,000
$ 15,000,001	–	25,000,000	$ 2,500
$ 25,000,001	–	and above	$ 3,000

(1) Any person required to register pursuant to this section whose registration fee would be less than seventy-five dollars ($75) shall pay an initial registration fee of seventy-five dollars ($75). Thereafter, the amount of the annual fee shall be as specified above or, according to the applicable classification, as described in paragraphs (2) to (9), inclusive.

(2) Any person selling a multi-ingredient product in which less than 70 percent of the ingredients are organic shall pay a fee of one hundred dollars ($100) or one-half of the amount that would be due based on the above chart, whichever is more.

(3) Producers that sell processed product shall pay fees based on the value of raw product prior to being processed and the value of any product sold as unprocessed.

(4) Any person that packs, repacks, labels, sorts, or otherwise handles any organic product that is outside the jurisdiction of the State Director of Health Services and that does not take title or manage the sale of the product, but provides only handling services for organic product, shall register and pay one hundred dollars ($100) per year.

(5) Commission merchants or brokers that do not take possession or title of the product but arrange for the sale of the product shall register and pay one hundred dollars ($100) per year.

(6) A retail store engaged in the handling or processing of organic products shall register and pay a fee of one hundred dollars ($100) for each store location that processes organic products onsite.

(7) Any person that provides temporary storage or transportation for organic product and does not handle the raw unpackaged product does not have to register.

(8) Any person that hires any other person for custom packing or labeling shall register and pay a fee based on the total sales of product custom produced for them as outlined in the chart above. In addition to the required registration information above the person must disclose on the registration form the names of all companies that pack and process for them.

(9) Any person required to register pursuant to this section that fits the description of more than one of the persons described above shall pay the greater of the multiple amounts.

SEC. 5. Section 62582 of the Food and Agricultural Code is amended to read:

62582. If the secretary determines that future shipments to a handler may not be eligible for coverage under this chapter in the event of a default, the secretary shall notify all producers who have a contract on file with the secretary, all cooperative associations, and other interested parties. The secretary may determine that future shipments will not be eligible when any of the following events occur:

(a) The handler fails to maintain a valid license or bond as required under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801).

(b) The handler has failed to pay producers as required under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801).

(c) The handler has failed to pay the amount due the pool equalization fund provided for in Chapter 3 (commencing with Section 62700).

(d) The handler fails to submit, when requested by the secretary, executed contracts that establish the relationship between affected parties.

SEC. 6. Section 110815 of the Health and Safety Code is amended to read:

110815. Unless otherwise defined pursuant to the National Organic Program, the following words and phrases, when used in this article, shall have the following meanings:

(a) ''Animal food'' means any food intended to be fed to any household animal, including, but not limited to, cats, or dogs and other carnivores. It does not include ''feed'' intended for livestock as defined in Section 205.2 of Title 7 of the Code of Federal Regulations.

(b) ''Director'' means the Director of the Department of Health Services.

(c) ''Enforcement authority'' means the governmental unit with primary enforcement jurisdiction, as provided in Section 110930.

(d) ''Handle'' means to sell, process, or package agricultural products.

(e) ''Handler'' means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.

(f) ''Handling operation'' means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products, that (1) receives or otherwise acquires agricultural products and (2) processes, packages, or stores agricultural products.

(g) ''NOP'' means the National Organic Program established pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(h) ''Processing'' means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(i) ''Prohibited materials'' means any materials prohibited under regulations adopted by (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)). For products not covered by the National Organic Program, prohibited materials are anything not on the approved list.

(j) ''Secretary'' means the Secretary of the California Department of Food and Agriculture.

(k) ''Sold as organic'' means any use of the terms ''organic,'' ''organically grown,'' or grammatical variations of those terms, whether orally or in writing, in connection with any product grown, handled,

processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any product and any ingredient in a multi-ingredient product.

(*l*) "USDA" means the United States Department of Agriculture.

SEC. 7. The division within the Department of Food and Agriculture formerly known as the Milk and Dairy Foods Control Branch shall be renamed the Milk and Dairy Food Safety Branch and is the branch referred to in Section 32501.5 of the Food and Agricultural Code.

CHAPTER 727

An act to add Chapter 9 (commencing with Section 100600) to Part 12 of Division 10 of the Public Utilities Code, relating to transportation.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Chapter 9 (commencing with Section 100600) is added to Part 12 of Division 10 of the Public Utilities Code, to read:

CHAPTER 9. BENEFIT ASSESSMENT DISTRICTS

100600. The Legislature finds and declares that:

(a) It is necessary and in the best interest of the citizens of the state to authorize the Santa Clara Valley Transportation Authority to levy special benefit assessments for needed public rail rapid transit facilities and services on the property that benefits from those facilities and services.

(b) The rail rapid transit facilities and services provide special benefits to parcels of land, and improvements thereon, in the vicinity of rail rapid transit stations, and provide general benefits to the community at large. The Board of Directors of the Santa Clara Valley Transportation Authority shall be the conclusive judge of the proportion of special and general benefits produced by the facilities and of the distribution of the special benefits among parcels of property within the benefit assessment district.

100601. (a) Whenever the board finds that property adjacent to, or in the vicinity of, one or more rail transit stations, or proposed rail transit stations, of the authority receives or will receive special benefit by reason of the location or operation of one or more of those rail transit

stations, the board may, by resolution adopted by a two-thirds vote of its members, provide for notice and hearing on its intention to establish one or more special benefit districts. If the board proposes to levy a special benefit assessment on real property therein for the purpose of financing, in whole or in part, the acquisition, construction, development, joint development, operation, maintenance, or repair of one or more rail transit stations and rail transit related facilities located within the benefit district, the board shall comply with the notice, protest, and hearing procedures set forth in Section 53753 of the Government Code.

(b) For purposes of this chapter, ''benefit district'' means a special benefit assessment district established pursuant to this chapter, the area of which shall not lie more than one-half mile from the center point of any rail transit station or proposed rail transit station.

(c) The resolution may provide that the proposed benefit district will contain separate zones, which may consist of either contiguous or noncontiguous areas of land within the district. The proposed benefit district and each proposed zone, if any, therein shall be an area adjacent to, or in the vicinity of, one or more rail transit stations or proposed rail transit stations. The boundaries of the benefit district and of each zone, if any, therein shall be drawn so as to reflect, as accurately as possible, the areas in which special benefits are conferred by reason of the proximity and operation of one or more rail transit stations.

(d) The notice stating the time and place of the hearing, and setting forth the boundaries and purpose of the proposed benefit district, shall be published prior to the time fixed for the hearing pursuant to Section 6066 of the Government Code.

(e) Notice shall also be mailed at least 30 days prior to the hearing to all owners of real property within the boundaries of the proposed benefit district whose names and addresses appear on the last equalized assessment roll or are otherwise known to the board of supervisors of the county in which the proposed benefit district is located or to the authority.

(f) For purposes of this chapter, ''transit related facilities'' means land, buildings, and equipment, or any interest therein, whether or not the operation thereof produces revenue, which has, as its primary purpose, the operation of the rail transit system or the providing of services to the passengers of the rail transit system, but does not mean any land, buildings, or equipment, or interest therein, which is used primarily for the production of revenue not arising from the operation of the rail transit system.

100601.5. (a) At the time and place fixed for the hearing on the establishment of the benefit district, or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. At the hearing, interested persons may appear and present matters material to

the proposed board action. At the conclusion of the hearing, the board shall, by a resolution adopted by a two-thirds vote of its members, determine whether to proceed with the proposed action.

The resolution shall state, as appropriate, the maximum and minimum rate of assessment, the amount of the special benefit assessment and the purposes for which it is to be levied, the estimated cost of accomplishing the purposes, and the dates or approximate intervals at which the assessment shall be levied. The resolution shall also state that the exterior boundaries of the benefit district are set forth on a map on file with the secretary of the authority, which map shall govern for all purposes as to the extent of the benefit district and zones, if any, therein and that the area set forth on the map shall thereupon constitute and be known as ''Benefit District No. ____ of the Santa Clara Valley Transportation Authority,'' or as ''Benefit Zone ____ of the Benefit District No. ____ of the Santa Clara Valley Transportation Authority,'' as designated by the board.

(b) The resolution shall be submitted to the governing body. The governing body shall, after a public hearing conducted by the governing body and prior to the creation of the benefit district, approve, or amend and approve, as amended, or disapprove the geographic boundaries of the benefit district and the method of assessment. The resolution of approval or disapproval from the governing body shall be returned to the board.

(c) The board shall, by a two-thirds vote of its members, determine whether to create the benefit district as approved by the governing body. If the board decides to proceed with creating the benefit district as approved by the governing body, the board may, in addition to any amendments made by the governing body, reduce the size of the benefit district, but in so doing shall not include any territory not included in the benefit district approved by the governing body nor change the approved method of assessment. The determination by the board is final and conclusive.

(d) For purposes of this section, ''governing body'' means the city council of a city in which the proposed benefit district is located or, if the benefit district is located in unincorporated territory, the board of supervisors of the county in which the proposed benefit district is located.

(e) The board may provide in the resolution, or in a later resolution, for changes in the assessment to particular real property within the benefit district or any zone therein in accordance with the provisions of Section 53753 of the Government Code.

100602. (a) In determining the amount of a special benefit assessment, the board shall measure the benefit to real property in the benefit district or zones therein according to the procedures and approval

process set forth in Section 4 of Article XIII D of the California Constitution.

(b) The special benefit assessment constitutes a charge imposed on particular real property for an authority project of direct benefit to that property, and does not constitute ad valorem taxes or any other form of general tax levy applying a given rate to the assessed valuation of all taxable property within the authority.

(c) The authority shall possess all powers necessary for, incidental to, or convenient for, the collection, enforcement, administration, or distribution of the special benefit assessment in accordance with California law.

(d) The revenue from a special benefit assessment, which is imposed pursuant to this chapter, or from bonds secured by such a special benefit assessment, for the purpose of financing a rail transit station or rail transit related facility located within the benefit district, shall be used only for financing of the facility for which it was levied, and that revenue shall not be used for any other purpose or the payment of any other expense of the authority, including, but not limited to, transit, transportation, or operating expense.

100602.2. An election shall be held if the board finds that a petition requesting that the proposal to form a benefit district be submitted to confirmation by the voters has been signed by the owners of at least 25 percent of the assessed value of real property within the benefit district.

100602.3. For purposes of this chapter, ''voter'' means an owner of real property which is assessed or proposed to be assessed under this chapter and which is within the boundaries of the benefit district.

100602.4. (a) Where land in the benefit district is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of that land shall designate in writing which one of the owners shall be deemed the owner of that land for purposes of qualifying as a voter.

(b) The legal representative of a corporation or an estate owning real property in the benefit district may act on behalf of the corporation or the estate.

(c) (1) For purposes of this chapter, ''legal representative'' means an official of a corporation owning real property in the benefit district.

(2) For purposes of this chapter, ''legal representative'' also means a guardian, conservator, executor, or administrator of the estate of the holder of title to real property in the benefit district who is all of the following:

(A) The person is appointed under the laws of this state.

(B) The person is entitled to the possession of the estate's real property.

(C) The person is authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.

(d) Before a legal representative acts as a voter at a district election, the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

100602.5. The petition for confirmation by the voters shall be filed with the board within 30 days after the conclusion of the public hearing required by Sections 100601 and 100601.5. If a petition meeting the requirements of Section 100602.2 is filed, the board shall adopt a resolution approving the proposal to form a benefit district subject to confirmation by the voters of the benefit district.

100602.6. After the board has adopted a resolution approving the proposal to form a benefit district under Section 100602.5, but before the board may levy any assessment, the board shall call an election in the benefit district for the purpose of submitting to the voters the proposition of levying the assessment by the benefit district. The resolution calling the election shall state each of the items required to be contained in the resolution adopted pursuant to Section 100601.5.

100602.7. The board shall submit the proposition of levying an assessment to the voters of the benefit district in accordance with the requirements of Section 53753 of the Government Code.

100602.8. If the proposition is approved at the election conducted under this chapter, the board may levy the assessment pursuant to the resolution adopted pursuant to Section 100602.

100602.9. (a) Any owner or owners of real property, which is, in whole or in part, within the benefit district, or their legal representatives, may jointly or severally file with the board a petition requesting that the real property owned by them or for which they are the legal representative be excluded from the benefit district on the ground that the real property sought to be excluded is not benefited or that the assessment be reduced on the ground that the assessment exceeds the benefit to that real property.

(b) The real property sought to be excluded or upon which the assessment is sought to be reduced shall be described by its legal description and shall be accompanied by a map depicting its location in relation to the benefit district.

(c) The petition shall contain a statement of facts in support of the petition and shall be acknowledged by the owner or the legal representative filing the petition.

100602.10. Notice of each hearing upon the petition for exclusion or reduction shall be given in accordance with subdivisions (d) and (e) of Section 100601.

100602.11. At the time and place provided in the notice or at any time and place to which the hearing is adjourned, the board or its appointed hearing officer shall hear all of the following:

(a) The petition for exclusion or reduction.

(b) All evidence or proofs that may be introduced by or on behalf of the petitioners.

(c) All objections to the petition that may be presented in writing by any person, including the authority.

(d) All evidence or proofs that may be introduced in support of objections to the petition.

100602.12. The expenses of giving the notice provided for herein and of the hearing on the exclusion or reduction petition shall be paid by the persons filing the petition.

100602.13. Upon the hearing on an exclusion or reduction petition by the board, or upon the record of hearing by a hearing officer, the board shall order the petition be denied when the petitioner has not shown by a preponderance of the evidence that in an exclusion petition his or her real property is not benefited or in a reduction petition that the assessment exceeds the benefit to the property.

100602.14. The board, after the hearing on an exclusion or reduction petition, shall order one of the following by resolution:

(a) In the case of an exclusion petition, order the exclusion of all or any part of the real property described in the petition upon its finding that the property will not be benefited by the operations of the authority in the vicinity of the benefit district.

(b) In the case of a reduction petition, order a change in the benefit assessment to all or any portion of the real property described in the petition to provide that it not exceed the amount of benefit derived by the operations of the authority in the vicinity of the benefit district.

(c) Confirm the assessment on the real property subject to the petition as correctly reflecting the amount of benefit to the real property.

100603. (a) Following formation of the benefit district or concurrently therewith, if the board deems it necessary to incur a bonded indebtedness for the acquisition, construction, development, joint development, completion, operation, maintenance, or repair of one or more rail transit stations and related rail transit facilities located within the benefit district, the board may provide, by resolution, that the bonded indebtedness shall be payable from special benefit assessments levied within the benefit district. The resolution shall be adopted by a two-thirds vote of the members of the board, and shall declare and state all of the following:

(1) That the board intends to incur an indebtedness, by the issuance of bonds of the authority, for the benefit district which the board has formed, or intends to form, within a portion of the authority.

(2) The purposes for which the proposed debt is to be incurred, which may include all costs and estimated costs necessary or convenient for, incidental to, or connected with, the accomplishment of the purposes, including, without limitation, engineering, inspection, legal, fiscal agent, financial consultant, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period, if any, and for a period not exceeding three years thereafter, and the expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(3) The estimated cost of accomplishing the purposes and the amount of the principal of the indebtedness to be incurred.

(4) That a general description of the benefit district and of each zone, if any, therein and maps showing the exterior boundaries thereof are on file with the secretary of the authority and available for inspection by any interested person.

(5) Those special benefit assessments for the payment of the bonds, and the interest thereon, are proposed to be levied in the benefit district or zones therein in accordance with the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution.

(6) The extent to which, if at all, all or a portion of the revenues of the authority are to be used to pay the principal of, interest on, and sinking fund payments for, the bonds, including the establishment and maintenance of any reserve fund therefor.

(7) The time and place set for hearing on the proposed issuance of the bonds.

(8) That, prior to levying a special benefit assessment, the board shall comply with the notice, protest, and hearing procedures set forth in Section 53753 of the Government Code.

(9) The maximum term the proposed bonds shall run before maturity, which shall not exceed 40 years from the date of the bonds or any series thereof.

(10) The maximum rate or rates of interest to be paid, which shall not exceed 12 percent per annum.

(11) That the pledge of special benefit assessment revenues to the bonds authorized by this section has priority over the use of any of those revenues for pay-as-you-go financing, except to the extent that this priority is expressly restricted by any of the authority's agreements with bondholders.

(b) The notice stating the time and place of the hearing on the proposed issuance of bonds shall be published prior to the time fixed for the hearing pursuant to Section 6066 of the Government Code. The notice, protest, and hearing procedures for levying the special benefit assessment shall comply with Section 53753 of the Government Code.

(c) Notice shall also be mailed at least 30 days prior to the hearing to all owners of real property within the boundaries of the benefit district whose names and addresses appear on the last equalized assessment roll or are otherwise known to the board of supervisors of the county in which the benefit district is located or to the authority.

100604. At the time and place fixed for the hearing on the issuance of bonds payable from special benefit assessments levied under this chapter, or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. Interested persons may appear at the hearing and present matters material to the questions set forth in the resolution. At the conclusion of the hearing on the proposed issuance of bonds, the board shall, by resolution adopted by a two-thirds vote of the members, determine whether to incur the bonded indebtedness.

The resolution shall state the amount of the proposed debt, the purposes for which it is to be incurred, and the estimated cost of accomplishing the purposes. The determinations made in the resolution are final and conclusive.

100605. Special benefit assessments for the payment of the principal of, and interest on, bonds issued for a benefit district shall be levied in the benefit district in accordance with the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution. Other revenues of the authority shall be used for the payment of the principal of, and interest on, the bonds only to the extent set forth in any agreement of the authority for the benefit of bondholders.

Special benefit assessments in the benefit district and zones, if any, therein shall be calculated in accordance with the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution.

100606. The bonds issued pursuant to this chapter shall bear interest at a rate or rates not exceeding 12 percent per annum, payable semiannually, except that the first interest payable on the bonds or any series thereof may be for any period not to exceed one year as determined by the board.

In the resolution or resolutions providing for the issuance of bonds, the board may also provide for call and redemption of the bonds prior to maturity at times and prices and upon any other terms that it may specify. However, no bond is subject to call or redemption prior to maturity unless the bond contains a recital to that effect. The denomination or denominations of bonds shall be stated in the resolution providing for their issuance, but shall not be less than five thousand dollars ($5,000). The principal of, and interest on, the bonds shall be payable in lawful money of the United States at the office of the treasurer of the authority or at any other place or places that may be designated by the board, or at either place or places at the option of the holders of the bonds. The

bonds shall be dated, numbered consecutively, signed by the board chairperson and chief financial officer, and countersigned by the secretary and shall have the official seal of the authority attached. The interest coupons of the bonds shall be signed by the chief financial officer. The seal and all signatures and countersignatures may be printed, lithographed, or mechanically reproduced, except that one signature or countersignature shall be manually affixed.

If an officer, whose signature or countersignature appears on the bonds or coupons, leaves office for any reason prior to the delivery of the bonds, the officer's signature is as effective as if the officer had remained in office.

100607. The bonds issued pursuant to this chapter may be sold as the board determines by resolution. The board may sell the bonds at a price below par.

If the board determines by resolution that the bonds shall be sold by competitive bid, the board, before selling the bonds, or any part thereof, shall give notice inviting sealed bids in the manner that it prescribes. If satisfactory bids are received, the bonds offered shall be awarded to the highest responsible bidder. If no bids are received, or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and either readvertise or sell the bonds at private sale or by negotiation, or by other lawful means.

If the board determines by resolution that the bonds shall not be sold by competitive bid, the board may sell the bonds at public or private sale, by negotiation, or by other lawful means.

100608. Delivery of any bonds issued under this chapter may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits.

100609. All accrued interest and premiums received on the sale of bonds issued by the authority pursuant to this chapter shall be placed in the fund to be used for the payment of principal of, and interest on, those bonds. The remainder of the proceeds received on the sale of the bonds shall be placed in the treasury to secure those bonds or for the purposes for which the debt was incurred.

When the purposes for which the debt was incurred have been accomplished, any money remaining shall be either (a) transferred to the fund to be used for the payment of principal of, and interest on, the bonds or (b) placed in a fund to be used for the purchase of those outstanding bonds of the authority, from time to time, in the open market at the prices and in the manner, either at public or private sale or otherwise, that the board determines. Bonds so purchased shall be canceled immediately.

100610. The board may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the authority

under this chapter upon the terms, at the times, and in the manner that it determines. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part, of the principal of the outstanding bonds issued under this chapter, the interest thereon, and the premiums, if any, due upon call and redemption thereof prior to maturity and all expenses of the refunding.

The provisions of this chapter, for the issuance and sale of bonds apply to the issuance and sale of refunding bonds, except that, when refunding bonds are to be exchanged for outstanding bonds, the method of exchange shall be as determined by the board.

100611. Any bonds issued under this chapter are legal investment for all trust funds; for the funds of insurance companies, commercial and savings banks, and trust companies; for state school funds; and, whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts, or other districts within this state, the money or funds may be invested in the bonds issued under this chapter.

Whenever bonds of cities, counties, school districts, or other districts within this state may, by any law now or hereafter enacted, be used as security for the performance of any act or the deposit of any public money, bonds issued under this chapter may be so used.

The provisions of this chapter are in addition to all other laws relating to legal investments and are controlling as the latest expression of the Legislature with respect thereto.

100612. The board may change the purposes for which any proposed debt is to be incurred, the estimated cost, the amount of bonded debt to be incurred, or the boundaries of the benefit district or zones, if any, therein or one or all of those matters, except that the board shall not change the boundaries to include any territory which will not, in its judgment, be benefited by the authority action.

100613. (a) The board shall not change the purposes, the estimated cost, the boundaries of the benefit district or zones, if any, therein, or the amount of bonded debt to be incurred until after it gives notice of its intention to do so, stating each proposed change in the purpose and stating, if applicable, that the exterior boundaries proposed to be changed are set forth on a map on file with the secretary of the authority. The notice shall also specify the time and place set for hearing.

(b) The notice shall be published prior to the time set for the hearing pursuant to Section 6066 of the Government Code.

(c) The notice shall also be mailed at least 30 days prior to the hearing to all owners of real property affected by the proposed change whose names and addresses appear on the last equalized assessment roll or are otherwise known to the board of supervisors of the county in which the benefit district is located or to the authority.

(d) Any proposed changes to a special benefit assessment shall follow the notice, protest, and hearing procedures set forth in Section 53753 of the Government Code.

100614. At the time and place fixed for a hearing on changes, or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. At the hearing, interested persons may appear and present matters material to the changes set forth in the notice.

At the conclusion of the hearing, the board shall, by resolution, determine whether to make any or all of the changes set forth in the notice. The determinations made in the resolution are conclusive and final. Changes to a special benefit assessment shall be made in accordance with the notice, protest, and hearing procedures set forth in Section 53753 of the Government Code.

100615. All decisions and determinations of the board, upon notice and hearing, are final and conclusive upon all persons entitled to appeal to the board as to all errors, informalities, and irregularities which the board might have avoided or remedied during the progress of the proceedings or which it can, at that time, remedy.

Any objection, appeal, or protest not made at the time of any hearing is deemed to be waived voluntarily by any person who might have made the appeal, protest, or objection, and the person is deemed to have consented to the action taken following the hearing and any other matter on which objection, protest, or appeal could have been made.

100616. Any action or proceeding, other than a petition for election pursuant to Section 100602.2, which contests, questions, or denies the validity or legality of the formation of any benefit district or zone, the issuance of any bonds therefor pursuant to this chapter, or any proceedings relating thereto, shall be commenced within six months from the date of the formation; otherwise, the formation of the benefit district or zone, the issuance of the bonds, and all proceedings relating thereto shall be held to be in every respect valid, legal, and incontestable.

100617. When the board has imposed a special benefit assessment, the secretary shall so certify to the assessor of the county in which the territory of any benefit district is located and deliver to the assessor copies of all maps and diagrams of the benefit district and zones, if any, therein, indicating the amount of the special benefit assessment to be levied within the benefit district and zones, if any, therein.

Special benefit assessments authorized by this chapter shall be levied and collected by the county at the same time and in the same manner as taxes are levied and collected. The county may deduct its reasonable expenses of collection and shall transmit the balance of the assessments to the authority.

100618. In the event of conflict with any other law, the provisions of this chapter shall prevail with respect to benefit districts within the authority.

100619. Notwithstanding any other provision of this chapter, the authority shall not pledge any portion of its general fund revenues to pay any part of any bonded indebtedness incurred under this chapter unless required by provisions of the California Constitution.

CHAPTER 728

An act to amend Section 66462.5 of the Government Code, relating to land use.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 66462.5 of the Government Code is amended to read:

66462.5. (a) A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the final map is filed with the local agency, to permit the improvements to be made. In such cases, unless the city, county, or city and county requires the subdivider to enter into an agreement pursuant to subdivision (c), the city, county or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of that title.

(b) If a city, county, or city and county has not required the subdivider to enter into an agreement pursuant to subdivision (c) and if a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. The waiver shall occur whether or not the city, county, or city and county has postponed or refused approval of the final map pursuant to subdivision (a).

(c) Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land that will permit the improvements to be made.

(d) Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.

(e) ''Offsite improvements,'' as used in this section, does not include improvements that are necessary to assure replacement or construction of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

CHAPTER 729

An act to amend Section 11580.9 of the Insurance Code, to add and repeal Section 97.1 of the Streets and Highways Code, and to amend Sections 34501.12, 34620, and 34621 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 11580.9 of the Insurance Code is amended to read:

11580.9. (a) Where two or more policies affording valid and collectible automobile liability insurance apply to the same motor vehicle in an occurrence out of which a liability loss shall arise, and one policy affords coverage to a named insured engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing motor vehicles, then both of the following shall be conclusively presumed:

(1) If, at the time of loss, the motor vehicle is being operated by any person engaged in any of these businesses, or by his or her employee or agent, the insurance afforded by the policy issued to the person engaged in the business shall be primary, and the insurance afforded by any other policy shall be excess.

(2) If, at the time of loss, the motor vehicle is being operated by any person other than as described in paragraph (1), the insurance afforded by the policy issued to any person engaged in any of these businesses

shall be excess over all other insurance available to the operator as a named insured or otherwise.

(b) Where two or more policies apply to the same loss, and one policy affords coverage to a named insured engaged in the business of renting or leasing motor vehicles without operators, it shall be conclusively presumed that the insurance afforded by that policy to a person other than the named insured or his or her agent or employee, shall be excess over and not concurrent with, any other valid and collectible insurance applicable to the same loss covering the person as a named insured or as an additional insured under a policy with limits at least equal to the financial responsibility requirements specified in Section 16056 of the Vehicle Code. The presumption provided by this subdivision shall apply only if, at the time of the loss, the involved motor vehicle either:

(1) Qualifies as a ''commercial vehicle.'' For purposes of this subdivision, ''commercial vehicle'' means a type of vehicle subject to registration or identification under the laws of this state and is one of the following:

(A) Used or maintained for the transportation of persons for hire, compensation, or profit.

(B) Designed, used, or maintained primarily for the transportation of property.

(2) Has been leased for a term of six months or longer.

(c) Where two or more policies are applicable to the same loss arising out of the loading or unloading of a motor vehicle, and one or more of the policies is issued to the owner, tenant, or lessee of the premises on which the loading or unloading occurs, it shall be conclusively presumed that the insurance afforded by the policy covering the motor vehicle shall not be primary, notwithstanding anything to the contrary in any endorsement required by law to be placed on the policy, but shall be excess over all other valid and collectible insurance applicable to the same loss with limits up to the financial responsibility requirements specified in Section 16056 of the Vehicle Code. In that event, the two or more policies shall not be construed as providing concurrent coverage, and only the insurance afforded by the policy or policies covering the premises on which the loading or unloading occurs shall be primary and the policy or policies shall cover as an additional insured with respect to the loading or unloading operations all employees of the owner, tenant, or lessee while acting in the course and scope of their employment.

(d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described

or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.

(e) Any insurance policy which, under the terms of subdivisions (a) to (d), inclusive, applies as excess coverage may provide with respect to any primary policy or to any loss to which primary insurance is not valid and collectible in whole or in part, that the excess policy shall apply only to the extent necessary to provide the insured with the coverage limits specified in Section 16056 of the Vehicle Code.

(f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have issued a policy or policies applicable to a loss described in these subdivisions and all named insureds under these policies.

(g) Where two or more personal policies affording valid and collectible liability insurance apply to the same motor vehicle in an occurrence out of which a loss shall arise, and one policy, as defined in subdivision (a) of Section 660, is primary, either by its terms or by operation of law, and one or more of the personal policies providing liability insurance, as defined in Section 108, are excess, either by their terms or by operation of law, then the following shall apply:

(1) Each insurer shall pay its share of the defense costs. Each insurer's share of the defense costs shall be the percentage of the total defense costs equal to the amount of damage paid by that insurer as a percentage of total damages paid by all insurers whose policies apply to that motor vehicle.

(2) The term "defense costs" means, for purposes of this subdivision, reasonable attorney's fees and expenses, investigation expenses, expert witness fees, and costs allowable under Section 1033.5 of the Code of Civil Procedure.

(h) For purposes of this article, a certificate of self-insurance issued pursuant to Section 16053 of the Vehicle Code or a deposit of cash made pursuant to Section 16054.2 of the Vehicle Code or a bond in effect pursuant to Section 16054 of the Vehicle Code or a report of governmental ownership or lease filed pursuant to Section 16051 of the Vehicle Code shall be considered a policy of automobile liability insurance. However, this subdivision does not establish or provide the basis for any other form of liability for or upon a self-insurer or other person or entity holding, issuing, or establishing any form of security as described herein.

SEC. 2. Section 97.1 is added to the Streets and Highways Code, to read:

97.1. (a) The five-mile segment of State Highway Route 101, between the Eureka Slough Bridge No. 4-22 and the Gannon Slough Bridge No. 4-24 in Arcata is a "Safety Enhancement-Double Fine Zone." This highway segment is subject to the rules and regulations

adopted by the department prescribing uniform standards for warning signs to notify motorists that, pursuant to Section 42010 of the Vehicle Code, increased penalties apply for traffic violations that are committed within a Safety Enhancement-Double Fine Zone. The department or the local authority having jurisdiction over this highway segment shall place and maintain the warning signs identifying this highway by stating that a ''Special Safety Zone Region Begins Here'' and a ''Special Safety Zone Ends Here.''

(b) Designation of this highway segment as a Safety Enhancement-Double Fine Zone does not increase the civil liability of the state under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or any other provision of law relating to civil liability.

(c) (1) Only the base fine shall be enhanced pursuant to this section.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

(d) The project specified in subdivision (a) shall not be elevated in priority for state funding purposes.

(e) 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. 3. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, ''motor carrier'' means the registered owner of any vehicle described in subdivision (a), (b), (e), (f), or (g) of Section 34500, except in the following circumstances:

(1) The registered owner leases the vehicle to another person for a term of more than four months. If the lease is for more than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier. A person who assumes the motor carrier responsibilities of another pursuant to subdivision (b) shall provide to that other person whose motor carrier responsibility is so assumed, a completed copy of a department form documenting that assumption, stating the period for which responsibility is assumed, and signed by an agent of the assuming person. A legible copy shall be carried in each vehicle or combination of vehicles operated on the highway during the period for which responsibility is assumed. That

copy shall be presented upon request by any authorized employee of the department. The original completed departmental form documenting the assumption shall be provided to the department within 30 days of the assumption. If the assumption of responsibility is terminated, the person who had assumed responsibility shall so notify the department in writing within 30 days of the termination.

(b) (1) A motor carrier may combine two or more terminals for purposes of the inspection required by subdivision (d) subject to all of the following conditions:

(A) The carrier identifies to the department, in writing, each terminal proposed to be included in the combination of terminals for purposes of this subdivision prior to an inspection of the designated terminal pursuant to subdivision (d).

(B) The carrier provides the department, prior to the inspection of the designated terminal pursuant to subdivision (d), a written listing of all its vehicles of a type subject to subdivision (a), (b), (e), (f), or (g) of Section 34500 that are based at each of the terminals combined for purposes of this subdivision. The listing shall specify the number of vehicles of each type at each terminal.

(C) The carrier provides to the department at the designated terminal during the inspection all maintenance records and driver records and a representative sample of vehicles based at each of the terminals included within the combination of terminals.

(2) If the carrier fails to provide the maintenance records, driver records, and representative sample of vehicles pursuant to subparagraph (C) of paragraph (1), the department shall assign the carrier an unsatisfactory terminal rating and require a reinspection to be conducted pursuant to subdivision (h).

(3) For purposes of this subdivision, the following terms have the meanings given:

(A) ''Driver records'' includes pull notice system records, driver proficiency records, and driver timekeeping records.

(B) ''Maintenance records'' includes all required maintenance, lubrication, and repair records and drivers' daily vehicle condition reports.

(C) ''Representative sample'' means the following, applied separately to the carrier's fleet of motortrucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4

16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (4) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) (1) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

(2) The department shall place an inspection priority on those terminals operating vehicles listed in subdivision (g) of Section 34500.

(3) As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,000 pounds, but does not include a pickup truck, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles that display special identification plates in accordance with Section 5011, implements of husbandry and farm vehicles, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(e) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (d). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The initial fee, which is nonrefundable, for a carrier that initially enrolls into the program, is six hundred fifty dollars ($650) per terminal. The initial fee is four hundred dollars ($400) for a motor carrier that owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles subject to this section. The renewal fee, which is nonrefundable, is four hundred dollars ($400) per terminal, except in the case of a motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles subject to this section, for which

the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the fee requirements of this section.

(2) Except as provided in paragraph (4), the inspection term for each inspected terminal of a motor carrier shall expire 25 months from the date the terminal receives a satisfactory compliance rating, as specified in subdivision (h). Applications and fees for subsequent inspections shall be submitted not earlier than nine months and not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) It is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph (1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Motor Carrier of Property Permit or Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Department of Motor Vehicles or the Public Utilities Commission, as appropriate.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(j) To encourage motor carriers to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned to a motor carrier terminal as a result of an inspection conducted pursuant to subdivision (d), and after each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d), or the motor carrier is rated unsatisfactory by the department following a controlled substances and alcohol testing program inspection. The certificate authorized under this paragraph shall not be awarded for performance in the administrative review authorized under paragraph (2). However, the certificate shall include a reference to any administrative reviews conducted during the period of consecutive satisfactory ratings.

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings assigned following inspections conducted pursuant to subdivision (d) is eligible for an administrative review in lieu of the next required inspection, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). An administrative review shall consist of all of the following:

(A) A signed request by a terminal management representative requesting the administrative review in lieu of the required inspection containing a promise to continue to maintain a satisfactory level of compliance for the next 25-month inspection term.

(B) A review with a terminal management representative of the carrier's record as contained in the department's files. If a terminal has been authorized a second consecutive administrative review, the review required under this subparagraph is optional, and may be omitted at the carrier's request.

(C) Absent any cogent reasons to the contrary, upon completion of the requirements of subparagraphs (A) and (B), the safety compliance rating assigned during the last required inspection shall be extended for 25 months.

(3) Not more than two administrative reviews may be conducted consecutively. At the completion of the 25-month inspection term following a second administrative review, a terminal inspection shall be conducted pursuant to subdivision (d). If this inspection results in a satisfactory compliance rating, the terminal shall again be eligible for an administrative review in lieu of the next required inspection. If the succession of satisfactory ratings is interrupted by any rating of other than satisfactory, irrespective of the reason for the inspection, the terminal shall again attain two consecutive satisfactory ratings to become eligible for an administrative review.

(4) As a condition for receiving the administrative reviews authorized under this subdivision in lieu of inspections, and in order to ensure that compliance levels remain satisfactory, the motor carrier shall agree to accept random, unannounced inspections by the department.

(k) This section shall be known and may be cited as the Biennial Inspection of Terminals Program or BIT.

SEC. 4. Section 34620 of the Vehicle Code is amended to read:

34620. (a) Except as provided in subdivision (b) and Section 34622, no motor carrier of property shall operate a commercial motor vehicle on any public highway in this state, unless it has complied with Section 34507.5 and has registered with the department its carrier identification number authorized or assigned thereunder, and holds a

valid moter carrier permit issued to that motor carrier by the department. The department shall issue a motor carrier permit upon the carrier's written request, compliance with Sections 34507.5, 34630, 34640, and subdivisions (e) and (h) of Section 34501.12, for motor carriers listed in that section, and the payment of the fee required by this chapter.

(b) No person shall contract with, or otherwise engage the services of, a motor carrier of property, unless that motor carrier holds a valid motor carrier of property permit issued by the department. No motor carrier of property shall contract or subcontract with, or otherwise engage the services of, another motor carrier of property, until the contracted motor carrier of property provides certification in the manner prescribed by this section, of compliance with subdivision (a). This certification shall be completed by the contracted motor carrier of property and shall include a provision requiring the contracted motor carrier of property to immediately notify the person to whom they are contracted if the contracted motor carrier of property's permit is suspended or revoked. A copy of the contracted motor carrier of property's permit shall accompany the required certificate. The Department of the California Highway Patrol shall, by regulation, prescribe the format for the certificate and may make available an optional specific form for that purpose. The certificate, or a copy thereof, shall be maintained by each involved party for the duration of the contract or period of service plus two years, and shall be presented for inspection at the location designated by each carrier under Section 34501.10, immediately upon the request of an authorized employee of the Department of the California Highway Patrol.

SEC. 5. Section 34621 of the Vehicle Code is amended to read:

34621. (a) The fee required by Section 7232 of the Revenue and Taxation Code shall be paid to the department upon initial application for a motor carrier permit and for annual renewal.

(b) An application for an original or a renewal motor carrier permit shall contain all of the following information:

(1) The full name of the motor carrier; any fictitious name under which it is doing business; address, both physical and mailing; and business telephone number.

(2) Status as individual, partnership, owner-operator, or corporation, and officers of corporation and all partners.

(3) Name, address, and driver's license number of owner-operator.

(4) California carrier number, number of commercial motor vehicles in fleet, interstate or intrastate operations, State Board of Equalization, federal Department of Transportation or Interstate Commerce Commission number, as applicable.

(5) Transporter or not a transporter of hazardous materials or petroleum.

(6) Evidence of financial responsibility.

(7) Evidence of workman's compensation coverage, if applicable.

(8) Carrier certification of enrollment in the biennial inspection of terminals (BIT) program under subdivisions (e) and (h) of Section 34501.12, unless otherwise exempted.

(9) Carrier certification of enrollment in a controlled substance and alcohol use and testing (CSAT) program required under Section 34520, unless otherwise exempted.

(10) Any other information necessary to enable the department to determine whether the applicant is entitled to a permit.

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 730

An act to add Sections 12749.93, 12749.94, and 12749.95 to the Water Code, relating to water development projects.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

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

(a) The United States Congress has determined that the impacts of flooding can be reduced through the construction of the Murrieta Creek Flood Control Project, which carefully balances flood control and environmental issues, and provides high quality, low maintenance flood control facilities coupled with recreation and environmental restoration.

(b) The Murrieta Creek Flood Control Project incorporates features that substantially reduce potential flood damages to existing residences, business, agriculture, and interstate commerce, while avoiding, minimizing, and mitigating impacts to environmental and recreational values.

(c) The Murrieta Creek Flood Control Project has been designed to produce the greatest feasible reduction in flood damages in the most efficient manner practicable, with due regard for environmental and

recreational considerations, and local economic conditions. As designed, the project serves multipurpose objectives, including flood control, habitat restoration, and enhanced recreational opportunities.

(d) The Murrieta Creek Flood Control Project includes two distinct reaches, the downstream reach, which extends southerly of Winchester Road, and the upstream reach, extending northerly of Winchester Road.

(e) The total annual benefit of providing protection from flood damages provided by the downstream portion of the Murrieta Creek Flood Control Project exceeds the annual cost of the project allocable to flood management, and is therefore eligible for funding under Section 12585.7 of the Water Code.

(f) The recreation and fish and wildlife enhancement features resulting from habitat restoration make the upstream reach of the Murrieta Creek Flood Control Project eligible for funding under Section 12847 of the Water Code.

SEC. 2. Section 12749.93 is added to the Water Code, to read:

12749.93. (a) The Murrieta Creek Flood Control Project from Winchester Road downstream through the city of Temecula, is adopted and authorized substantially in accordance with Public Law 106-377, enacted on October 27, 2000, and Section 12585.7, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendation and advice of the department, and in accordance with Section 12847.

(b) The Riverside County Flood Control and Water Conservation District shall give assurances, satisfactory to the Secretary of the Army, that the local cooperation required by federal law will be furnished by the district in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The district, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

(d) The Riverside County Flood Control and Water Conservation District shall enter into an agreement with the department pursuant to which the district agrees to indemnify and hold and save the state, its officers, agents, and employees harmless for any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the project.

SEC. 3. Section 12749.94 is added to the Water Code, to read:

12749.94. (a) The recreation and fish and wildlife features of the Murrieta Creek Flood Control Project from Winchester Road upstream through the City of Murrieta to Tenaja Road are adopted and authorized for state participation pursuant to Section 12847; however, the state shall

not provide financial assistance for the flood control features of the upstream reach pursuant to Chapter 1 (commencing with Section 12570) and this chapter.

(b) The Riverside County Flood Control and Water Conservation District shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by federal law will be furnished by the district in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The district, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

(d) The Riverside County Flood Control and Water Conservation District shall enter into an agreement with the department pursuant to which the district agrees to indemnify and hold and save the state, its officers, agents, and employees harmless for any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the project.

SEC. 4. Section 12749.95 is added to the Water Code, to read:

12749.95. Notwithstanding Sections 12749.93 and 12749.94, it is the intent of the Legislature that no funds be appropriated for state cooperation in the Murrieta Creek Flood Control Project before July 1, 2013.

SEC. 5. The Legislature finds and declares that, because of the unique circumstances applicable only to the Murrieta Creek Flood Control Project, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 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 are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 731

An act to amend Section 399.14 of, and to add Section 399.16 to, the Public Utilities Code, relating to energy.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

SECTION 1. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. This provision shall not apply before April 1, 2004, for any electrical corporation that on June 30, 2003, is in federal court under Chapter 11 of the federal bankruptcy law.

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are

obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the

commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, ''procure'' means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section 383.5, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is ''public works'' for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 2. Section 399.16 is added to the Public Utilities Code, to read:

399.16. The commission may consider an electric generating facility that is located outside the state to be an eligible renewable energy

resource if it meets the criteria described in Section 399.12 and all of the following requirements:

(a) It is located so that it is, or will be, connected to the Western Electricity Coordinating Council (WECC) transmission system.

(b) It is developed with guaranteed contracts to sell its generation, and demonstrates delivery of energy, to a retail seller or the Independent System Operator.

(c) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the State Energy Resources Conservation and Development Commission pursuant to subdivision (b) of Section 399.13.

CHAPTER 732

An act to amend Sections 25350, 25350.60, and 25537 of the Government Code, relating to county real property.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 25350 of the Government Code is amended to read:

25350. No purchase of real property, including any water right or other interest therein, of which the purchase price is in excess of the dollar limit established by ordinance adopted pursuant to Section 25350.60, or, if no ordinance is adopted, in excess of fifty thousand dollars ($50,000), shall be made unless a notice of the intention of the board of supervisors or, if applicable, the county officer authorized to purchase real property pursuant to Section 25350.60, to make the purchase is published in the county pursuant to Section 6063. If no newspaper is published in the county, the notice shall be posted at least three weeks prior to the time the board meets to consummate the purchase in at least three public places in each supervisorial district. The notice shall contain a description of the property proposed to be purchased, the price, the vendor, and a statement of the time the board will meet to consummate the purchase.

Nothing contained in this section shall be deemed to preclude the settlement of an action in eminent domain or the acquisition of any real property or interest therein for the uses and purposes of county highways without compliance with this section.

SEC. 2. Section 25350.60 of the Government Code is amended to read:

25350.60. (a) The board of supervisors of a county may, by ordinance, authorize a county officer it deems appropriate to perform any or all acts necessary to approve and accept for the county the acquisition of any interest in real property.

(b) The authorization shall specify procedures for the exercise of the authority by the officer so designated and shall establish a dollar limit on any purchase price.

(c) A county officer's authority granted by ordinance under this section may not be effective for more than five years.

SEC. 3. Section 25537 of the Government Code is amended to read:

25537. (a) In any county the board of supervisors may prescribe by ordinance a procedure alternative to that required by Sections 25526 to 25535, inclusive, for the leasing or licensing of any real property belonging to, leased by, or licensed by, the county. Any alternative procedure so prescribed shall require that the board of supervisors either accept the highest proposal for the proposed lease or license submitted in response to a call for bids posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation, if the newspaper is published in the county, or reject all bids.

(b) Leases or licenses of a duration not exceeding 10 years and having an estimated monthly rental not exceeding a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, not exceeding ten thousand dollars ($10,000), may be excluded from the bidding procedure specified in subdivision (a), except that notice shall be given pursuant to Section 6061, posted in the office of the clerk of the board of supervisors, and if the lease or license involves residential property, notice shall be given to the housing sponsors, as defined by Sections 50074 and 50074.5 of the Health and Safety Code. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license. If a lease or license is excluded from the bidding procedure, the actual monthly rental in the executed lease or license may not exceed a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, may not exceed ten thousand dollars ($10,000), the term of the executed lease or license shall not exceed 10 years, and the lease or license is not renewable.

(c) (1) The board of supervisors may, by ordinance, authorize the county officer or officers as are deemed appropriate, to execute leases or licenses pursuant to this section.

(2) A county officer's authority granted by ordinance under this section may not be effective for more than five years.

(3) A county officer authorized by the board of supervisors to execute licenses pursuant to this section shall provide a notice to the supervisorial district office in which the property proposed to be licensed is located at least five working days prior to execution of the license. The notice shall describe the property proposed to be licensed, the terms and conditions of the license, and the name of the proposed licensee. If the supervisorial district office has not responded in writing objecting to the proposed license within five working days after the notice has been provided, the proposed license shall be deemed approved by the district office. If the supervisorial district office objects to the proposed license in writing within five working days, the license may be submitted for approval by the board of supervisors at a regular meeting.

(d) Notice pursuant to this section shall also be mailed or delivered at least 15 days prior to accepting offers to lease or license pursuant to this section to any person who has filed a written request for notice with either the clerk of the board or with any other person designated by the board to receive these requests. The county may charge a fee that is reasonably related to the costs of providing this service and the county may require each request to be annually renewed. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license.

CHAPTER 733

An act to amend Sections 25401.2, 25523, 25525, and 25620.5 of, and to amend and renumber Section 25620.10 of, the Public Resources Code, to amend Sections 279, 383.5, and 445 of, and to repeal Division 4.7 (commencing with Section 9201) of, the Public Utilities Code, and to amend Section 2 of Chapter 850 of the Statutes of 2002, relating to energy and telecommunications.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 25401.2 of the Public Resources Code is amended to read:

25401.2. (a) As part of the report required by Section 25302, the commission shall develop and update an inventory of current and potential cost-effective opportunities in each utility's service territory, to improve efficiencies and to help utilities manage loads in all sectors of natural gas and electricity use. The report shall include estimates of the overall magnitude of these resources, load shapes, and the projected costs associated with delivering the various types of energy savings that are identified in the inventory. The report shall also estimate the amount and incremental cost per unit of potential energy efficiency and load management activities. Where applicable, the inventory shall include data on variations in savings and costs associated with particular measures. The report shall take into consideration environmental benefits as developed in related commission and public utilities commission proceedings.

(b) The commission shall develop and maintain the inventory in consultation with electric and gas utilities, the Public Utilities Commission, academic institutions, and other interested parties.

(c) The commission shall convene a technical advisory group to develop an analytic framework for the inventory, to discuss the level of detail at which the inventory would operate, and to ensure that the inventory is consistent with other demand-side databases. Privately owned electric and gas utilities shall provide financial support, gather data, and provide analysis for activities that the technical advisory group recommends. The technical advisory group shall terminate on January 1, 1993.

SEC. 2. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2

(commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to the licensing of the project by the commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. The commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be

monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

SEC. 3. Section 25525 of the Public Resources Code is amended to read:

25525. The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The commission may not make a finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523.

SEC. 4. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

(1) Whenever the desired award is not for a fixed price.

(2) Whenever project specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.

(3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.

(4) Whenever there is a need to afford bidders an opportunity to revise their proposals.

(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish interagency agreements.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state shall be reasonable and the commission may only enter into a single source agreement with a particular party if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g) and in consultation with the Department of General Services, may provide awards on a sole source basis when the cost to the state is reasonable and the commission makes any of the following determinations:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(4) The award funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity does

not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Section 25620.10 of the Public Resources Code, as added by Section 9 of Chapter 515 of the Statutes of 2002, is amended and renumbered to read:

25620.11. The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall include as appropriate, but not be limited to, representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

SEC. 6. Section 279 of the Public Utilities Code is amended to read:

279. (a) There is hereby created the Payphone Service Providers Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of programs to educate pay phone service providers, ensure compliance with the commission's requirements for pay phone operations, and educate consumers on matters related to pay phones, as provided for in commission Decision 90-06-018.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the programs specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on October 1, 2001, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenues collected prior to October 1, 2001, to the Controller for deposit in the Payphone Service Providers Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(c) Moneys appropriated from the Payphone Service Providers Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

SEC. 7. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.

(b) As used in this section, the following terms have the following meaning:

(1) ''In-state renewable electricity generation technology'' means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, ''solid waste conversion'' means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

(2) ''Report'' means the report entitled ''Investing in Renewable Electricity Generation in California'' (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.

(3) ''Energy Commission'' means the State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under this subdivision shall be limited to those technologies found eligible for funds by the Energy Commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6.

(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Of the funding for existing renewable electricity generation technology facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(B) The Energy Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The Energy Commission shall also consider inflation when adjusting the structure.

(C) The Energy Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market clearing price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market clearing price for electricity shall be determined by the Energy Commission based on the energy prices paid to nonutility power generators as authorized by the commission, or on otherwise available measures of market price. For the first tier biomass technologies, the Energy Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price. The Energy Commission may establish a different incentive rate within the same technology tier to account for discounted contracts.

(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by

the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the Energy Commission.

(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of ''in-state renewable electricity generation technology'' facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(D) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.

(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty

may not exceed 10 percent of the total amount of the funding requested by the applicant.

(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(5) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(6) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they certify to the satisfaction of the Energy Commission that fuel utilization is limited to the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511), Part 2, Division 4, Public Resource Code).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

(e) (1) Seventeen and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or in the amount of electricity production of the system, measured in kilowatthours, determined by the Energy Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the Energy Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The Energy Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be

operated in compliance with applicable law and the rules of the commission shall be eligible for funding.

(D) The Energy Commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(E) In awarding funding, the Energy Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(F) In awarding funding, the Energy Commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insolation levels, and installation orientation.

(f) (1) Ten percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(2) Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

(B) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits may not exceed one and one-half cents ($0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars ($1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) The Energy Commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(D) The commission shall notify the Energy Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(E) By March 31, 2003, the Energy Commission shall report to the Governor and the Legislature on how to most effectively utilize the funds for customer credits, including whether, and under what conditions, the program should be continued. The report shall include an examination of trends in markets for renewable energy, including the trading of nonenergy attributes, and the role of customer credits in these markets. The report will recommend an appropriate funding allocation for the customer credits and how implementation of the customer credits should be structured, if appropriate.

(F) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.

(g) One percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(h) (1) The Energy Commission shall adopt guidelines governing the funding programs authorized under this section and Section 399.13, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

(2) Funds to further the purposes of this section may be committed for multiple years.

(3) Awards made pursuant to this section are grants, subject to appeal to the Energy Commission upon a showing that factors other than those described in the guidelines adopted by the Energy Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the Energy Commission, shall not constitute the rendering of goods, services, or a direct benefit to the Energy Commission.

(i) The Energy Commission shall report to the Legislature on or before March 31, 2004, and annually thereafter, regarding the results of the mechanisms funded pursuant to this section. The report shall contain the following elements:

(A) A description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies.

(B) The status of account transfers and repayments.

(C) A description of the cumulative commitment of claims by account, the relative demand for funds by account, and a forecast of future awards.

(D) A discussion of the progress being made toward achieving the 17-percent target provided in subdivision (a) by each funding category authorized pursuant to subdivisions (c), (d), (e), (f), and (g) of this section.

(E) The description of the allocation of funds from interest on the accounts described in this section, and money in the accounts described in subdivision (e) of Section 381.

(F) An itemized list, including project descriptions, award amounts, and outcomes for projects awarded funding in the prior year.

(G) Other matters the Energy Commission determines may be of importance to the Legislature.

(2) Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this subdivision, except that reallocations may not reduce the allocation established in subdivision (d) nor increase the allocation established in subdivision (c).

(j) The Energy Commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total

electricity generated for consumption in California by 2006. The Energy Commission shall consult with the commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.

(k) The Energy Commission shall participate in proceedings at the commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.

SEC. 8. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Customer-Credit Renewable Resource Purchases Account.

(5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to paragraphs (3) and (6) of subdivision (c) of Section 381, shall be transmitted to the State Energy Resources Conservation and Development Commission (hereafter the Energy Commission) at least quarterly for deposit in the Renewable Resource Trust Fund. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the Energy Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the Energy Commission without regard to fiscal year for the purposes enumerated in Section 383.5.

(e) Upon notification by the Energy Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in Section 383.5. The eligibility of each award shall be determined solely by the Energy

Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the Energy Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the Energy Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in Section 383.5; and an accounting of future costs associated with any award or group of awards known to the Energy Commission to represent a portion of a multiyear funding commitment.

(f) The Energy Commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

(g) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 9. Division 4.7 (commencing with Section 9201) of the Public Utilities Code is repealed.

SEC. 10. Section 2 of Chapter 850 of the Statutes of 2002 is amended to read:

Sec. 2. (a) On or before September 30, 2003, the State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, shall report to the Legislature and the Governor regarding the feasibility of implementing real-time pricing, critical peak pricing, and other dynamic pricing tariffs for electricity in California, as strategies which can either reduce peak demand or shift peak demand load to off-peak periods.

(b) The report shall consider all of the following:

(1) How wholesale real-time prices would be calculated and made available to customers.

(2) Options for day-ahead and hour-ahead retail prices.

(3) Options for incorporating demand responsiveness into the wholesale competitive market and operations of the California Independent System Operator.

(4) Options for ensuring customer protection under a real-time, critical peak, and other dynamic pricing scenarios, including identifying potentially disadvantaged groups who may be disproportionately

vulnerable to the impact of volatile prices and suggestions for effective safeguards for those customers.

(5) A summary of current cooperative activities to further implementation of price responsive demand among appropriate state agencies.

(6) A listing of existing statutes and other regulatory barriers that could constrain the implementation of price responsive demand, or are redundant with price responsive demand.

(7) Identification of means to ensure consumer protection.

SEC. 11. It is the intent of the Legislature that the report required by subdivision (i) of Section 383.5 of the Public Utilities Code, is the annual report required by Item 3360-001-0381 of the Supplemental Budget Report of the 1999 Budget Act.

CHAPTER 734

An act to add Section 6217.2 to the Public Resources Code, relating to salmon.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 6217.2 is added to the Public Resources Code, to read:

6217.2. Notwithstanding Section 16304.1 of the Government Code, a disbursement in liquidation of an encumbrance for a project funded pursuant to the Coastal Watershed Salmon Habitat Program, as identified in Section 6217.1, may be made before or during the four years following the last day an appropriation is available for encumbrance.

CHAPTER 735

An act to amend Sections 3511, 4700, 5050, and 5515 of the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 3511 of the Fish and Game Code is amended to read:

3511. (a) (1) Except as provided in Section 2081.7, fully protected birds or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of those species pursuant to a permit for the protection of livestock. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, ''scientific research'' does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

(1) American peregrine falcon (Falco peregrinus anatum).
(2) Brown pelican.
(3) California black rail (Laterallus jamaicensis coturniculus).
(4) California clapper rail (Rallus longirostris obsoletus).
(5) California condor (Gymnogyps californianus).
(6) California least tern (Sterna albifrons browni).
(7) Golden eagle.
(8) Greater sandhill crane (Grus canadensis tabida).
(9) Light-footed clapper rail (Rallus longirostris levipes).
(10) Southern bald eagle (Haliaeetus leucocephalus leucocephalus).
(11) Trumpeter swan (Cygnus buccinator).
(12) White-tailed kite (Elanus leucurus).
(13) Yuma clapper rail (Rallus longirostris yumanensis).

SEC. 2. Section 4700 of the Fish and Game Code is amended to read:

4700. (a) (1) Except as provided in Section 2081.7, fully protected mammals or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, ''scientific research'' does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (Dipodomys heermanni morroensis).

(2) Bighorn sheep (Ovis canadensis), except Nelson bighorn sheep (subspecies Ovis canadensis nelsoni) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (Mirounga angustirostris).

(4) Guadalupe fur seal (Arctocephalus townsendi).

(5) Ring-tailed cat (genus Bassariscus).

(6) Pacific right whale (Eubalaena sieboldi).

(7) Salt-marsh harvest mouse (Reithrodontomys raviventris).

(8) Southern sea otter (Enhydra lutris nereis).

(9) Wolverine (Gulo luscus).

SEC. 3. Section 5050 of the Fish and Game Code is amended to read:

5050. (a) (1) Except as provided in Section 2081.7, fully protected reptiles and amphibians or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected reptile or amphibian, and no permits or licenses heretofore issued shall

have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, ''scientific research'' does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected reptiles or amphibians or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (Crotaphytus wislizenii silus).

(2) San Francisco garter snake (Thamnophis sirtalis tetrataenia).

(3) Santa Cruz long-toed salamander (Ambystoma macrodactylum croceum).

(4) Limestone salamander (Hydromantes brunus).

(5) Black toad (Bufo boreas exsul).

SEC. 4. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in Section 2081.7, fully protected fish or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected fish, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published

in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, ''scientific research'' does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

(1) Colorado River squawfish (Ptychocheilus lucius).

(2) Thicktail chub (Gila crassicauda).

(3) Mohave chub (Gila mohavensis).

(4) Lost River sucker (Catostomus luxatus).

(5) Modoc sucker (Catostomus microps).

(6) Shortnose sucker (Chasmistes brevirostris).

(7) Humpback sucker (Xyrauchen texanus).

(8) Owens River pupfish (Cyprinoden radiosus).

(9) Unarmored threespine stickleback (Gasterosteus aculeatus williamsoni).

(10) Rough sculpin (Cottus asperrimus).

CHAPTER 736

An act to repeal and add Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, relating to fish and wildlife, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code is repealed.

SEC. 2. Chapter 6 (commencing with Section 1600) of Division 2 is added to the Fish and Game Code, to read:

CHAPTER 6. FISH AND WILDLIFE PROTECTION AND CONSERVATION

1600. The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their

conservation is a proper responsibility of the state. This chapter is enacted to provide conservation for these resources.

1601. The following definitions apply to this chapter:

(a) ''Agreement'' means a lake or streambed alteration agreement.

(b) ''Day'' means calendar day.

(c) ''Emergency'' has the same definition as in Section 21060.3 of the Public Resources Code.

(d) ''Entity'' means any person, state or local governmental agency, or public utility that is subject to this chapter.

1602. (a) An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:

(1) The department receives written notification regarding the activity in the manner prescribed by the department. The notification shall include, but is not limited to, all of the following:

(A) A detailed description of the project's location and a map.

(B) The name, if any, of the river, stream, or lake affected.

(C) A detailed project description, including, but not limited to, construction plans and drawings, if applicable.

(D) A copy of any document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(E) A copy of any other applicable local, state, or federal permit or agreement already issued.

(F) Any other information required by the department.

(2) The department determines the notification is complete in accordance with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, irrespective of whether the activity constitutes a development project for the purposes of that chapter.

(3) The entity pays the applicable fees, pursuant to Section 1609.

(4) One of the following occurs:

(A)

(i) The department informs the entity, in writing, that the activity will not substantially adversely affect an existing fish or wildlife resource, and that the entity may commence the activity without an agreement, if the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(ii) Each region of the department shall log the notifications of activities where no agreement is required. The log shall list the date the notification was received by the department, a brief description of the

proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this clause may be renewed annually.

(B) The department determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource, and the entity conducts the activity in accordance with the agreement.

(C) A panel of arbitrators issues a final agreement to the entity in accordance with subdivision (b) of Section 1603, and the entity conducts the activity in accordance with the agreement.

(D) The department does not issue a draft agreement to the entity within 60 days from the date notification is complete, and the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(b) (1) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required after the initial notification and agreement, unless the department determines either of the following:

(A) The work described in the agreement has substantially changed.

(B) Conditions affecting fish and wildlife resources have substantially changed, and those resources are adversely affected by the activity conducted under the agreement.

(2) This subdivision applies only if notice to, and agreement with, the department was attained prior to January 1, 1977, and the department has been provided a copy of the agreement or other proof of the existence of the agreement that satisfies the department, if requested.

(c) It is unlawful for any person to violate this chapter.

1603. (a) After the notification is complete, the department shall determine whether the activity may substantially adversely affect an existing fish and wildlife resource. If the department determines that the activity may have that effect, the department shall provide a draft agreement to the entity within 60 days after the notification is complete. The draft agreement shall describe the fish and wildlife resources that the department has determined the activity may substantially adversely affect and include measures to protect those resources. The department's description of the affected resources shall be specific and detailed, and the department shall make available, upon request, the information upon which its determination of substantial adverse effect is based. Within 30 days of the date of receipt of the draft agreement, the entity shall notify the department whether the measures to protect fish and wildlife

resources in that draft agreement are acceptable. If the department's measures are not acceptable, the entity shall so notify the department in writing and specify the measures that are not acceptable. Upon written request, the department shall meet with the entity within 14 days of the date the department receives the request for the purpose of resolving any disagreement regarding those measures. If the entity fails to respond, in writing, within 90 days of receiving the draft agreement, the department may withdraw that agreement, and require the entity to resubmit a notification to the department before commencing the activity.

(b) If mutual agreement is not reached at any meeting held pursuant to subdivision (a), the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. A panel of arbitrators shall be appointed within 14 days of receipt of the written request. The panel of arbitrators shall be comprised of three persons, as follows: one representative selected by the department; one representative selected by the affected entity; and a third person mutually agreed upon by the department and the entity, who shall serve as the panel chair. If the department and the entity cannot agree on the third person within that 14-day period, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall have scientific expertise relevant to the fish and wildlife resources that may be substantially adversely affected by the activity proposed by the entity and to the measures proposed by the department to protect those resources. The authority of the panel of arbitrators is limited to resolving disagreements regarding the measures specified in subdivision (a), and subdivisions (b) and (g) of Section 1605, and, in the case of an extension, whether or not the agreement needs to be modified to protect fish and wildlife resources. Any decision by the panel of arbitrators shall be issued within 14 days from the date the panel was established, shall be binding on the department and the affected entity, shall be based on the best scientific information reasonably available at the time of the arbitration, and, except for a decision to extend an agreement without modification, shall be made in the form of a final agreement. The final agreement issued by the panel shall also include, without modification, all measures that were not subject to arbitration. Each party shall pay the expenses of their selected representative and pay one-half the expenses of the third person.

1604. Any party affected by a decision made by an arbitration panel pursuant to this chapter may petition a court of competent jurisdiction for confirmation, correction, or vacation of the decision in accordance with Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

1605. (a) (1) Except as otherwise provided in this section, the term of an agreement shall not exceed five years.

(2) Notwithstanding paragraph (1), after the agreement expires, the entity shall remain responsible for implementing any mitigation or other measures specified in the agreement to protect fish and wildlife resources.

(b) Any entity may request one extension of a previously-approved agreement, if the entity requests the extension prior to the expiration of its original term. The department shall grant the extension unless it determines that the agreement requires modification because the measures contained in the agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. In the event the department makes that determination, the department shall propose measures intended to protect those resources.

(c) If the entity disagrees with the department's determination that the agreement requires modification to protect fish and wildlife resources or with the measures proposed by the department, the disagreement shall be resolved pursuant to the procedures described in subdivision (b) of Section 1603.

(d) The department may not extend an agreement for more than five years.

(e) (1) An original agreement shall remain in effect until the department grants the extension request, or new measures are imposed to protect fish and wildlife resources by agreement or through the arbitration process.

(2) Notwithstanding paragraph (1), an original agreement may not remain in effect for more than one year after its expiration date.

(f) If the entity fails to submit a request to extend an agreement prior to its expiration, the entity shall submit a new notification before commencing or continuing the activity covered by the agreement.

(g) Notwithstanding paragraph (1) of subdivision (a), the department may issue an agreement, that otherwise meets the requirements of this chapter, for a term longer than five years if the following conditions are satisfied:

(1) The information the entity provides to the department in its notification meets the requirements of paragraph (1) of subdivision (a) of Section 1602.

(2) The entity agrees to provide a status report to the department every four years. The status report shall be delivered to the department no later than 90 days prior to the end of each four-year period, and shall include all of the following information:

(A) A copy of the original agreement.

(B) The status of the activity covered by the agreement.

(C) An evaluation of the success or failure of the measures in the agreement to protect the fish and wildlife resources that the activity may substantially adversely affect.

(D) A discussion of any factors that could increase the predicted adverse impacts on fish and wildlife resources, and a description of the resources that may be adversely affected.

(3) The department shall review the four-year status report, and conduct an onsite inspection to confirm that the entity is in compliance with the agreement and that the measures in the agreement continue to protect the fish and wildlife resources. If the department determines that the measures in the agreement no longer protect the fish and wildlife resources that are being substantially adversely affected by the activity, the department, in consultation with the entity, and within 45 days of receipt of the report, shall impose one or more new measures to protect the fish and wildlife resources affected by the activity. If requested to do so by the entity, the department shall make available the information upon which it determined the agreement no longer protects the affected fish and wildlife resources. If the entity disagrees with one or more of the new measures, within seven days of receiving the new measures, it shall notify the department, in writing, of the disagreement. The entity and the department shall consult regarding the disagreement. The consultation shall be completed within seven days after the department receives the entity's notice of disagreement. If the department and entity fail to reach agreement, the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. The panel of arbitrators shall be appointed within 14 days of the completed consultation. The panel of arbitrators shall issue a decision within 14 days of the date it is established. All other provisions of subdivision (b) of Section 1603 regarding the panel shall apply to any arbitration panel established in accordance with this subdivision. If the entity fails to provide timely status reports as required by this subdivision, the department may suspend or revoke the agreement.

(4) The agreement shall authorize department employees to conduct onsite inspections relevant to the agreement, upon reasonable notice. Nothing in this section limits the authority of department employees to inspect private or public sites.

(5) Except as provided in paragraph (3), subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the time periods to process agreements specified in this chapter do not apply to agreements issued pursuant to this section.

(h) Each region of the department shall log the notifications of activities for which a long-term agreement is being considered pursuant to subdivision (g). The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log

to that person monthly for one year. A request made pursuant to this paragraph may be renewed annually.

1606. The department shall not condition the issuance of an agreement on the receipt of another local, state, or federal permit.

1607. Any time period prescribed in this chapter may be extended by mutual agreement.

1608. The department shall provide any entity that submits a notification pursuant to Section 1602 with all of the following information:

(a) The time period for review of the notification.

(b) An explanation of the entity's right to object to any measures proposed by the department.

(c) The time period within which objections may be made in writing to the department.

(d) The time period within which the department is required to respond, in writing, to the entity's objections.

(e) An explanation of the right of the entity to arbitrate any measures in a draft agreement.

(f) The procedures and statutory timelines for arbitration, including, but not limited to, information about the payment requirements for arbitrator fees.

(g) The current schedule of fees to obtain an agreement.

1609. (a) The director may establish a graduated schedule of fees to be charged to any entity subject to this chapter. The fees charged shall be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter, including, but not limited to, preparing and submitting agreements and conducting inspections. The department may adjust the fees pursuant to Section 713. Fees received pursuant to this section shall be deposited in the Fish and Game Preservation Fund.

(b) (1) The fee schedule established pursuant to subdivision (a) may not impose a fee that exceeds five thousand dollars ($5,000) for any agreement.

(2) The fee limitation described in paragraph (1) does not apply to any agreement issued pursuant to subdivision (g) of Section 1605.

1610. (a) Except as provided in subdivision (b), this chapter does not apply to any of the following:

(1) Immediate emergency work necessary to protect life or property.

(2) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an 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.

(3) Emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, within the existing right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway, or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This paragraph does not exempt from this chapter any project undertaken, carried out, or approved by a state or local governmental agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide. The exception provided in this paragraph does not apply to a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code.

(b) The entity performing the emergency work described in subdivision (a) shall notify the department of the work, in writing, within 14 days of beginning the work. Any work described in the emergency notification that does not meet the criteria for the emergency work described in subdivision (a) is a violation of this chapter if the entity did not first notify the department in accordance with Section 1602.

1611. (a) An entity that submits a timber harvesting plan in accordance with Section 4581 of the Public Resources Code or directly to the department is deemed to have given the notification required by Section 1602, as long as the following information is included in the plan:

(1) The volume, type, and equipment to be used in removing or displacing any one or combination of soil, sand, gravel, or boulders.

(2) The volume of water, intended use, and equipment to be used in any water diversion or impoundment, if applicable.

(3) The equipment to be used in road or bridge construction.

(4) The type and density of vegetation to be affected and an estimate of the area involved.

(5) A diagram or sketch of the location of the operation that clearly indicates the stream or other water and access from a named public road. Locked gates shall be indicated and the compass direction shall be shown.

(6) A description of the period of time in which operations will be carried out.

(b) Notwithstanding subdivision (a), the department is not required to determine whether the notification is complete or otherwise process the notification until the timber harvesting plan and the proper notification fee have both been received by the department.

(c) Nothing in this section requires the department to issue an agreement fewer than 60 days from the date the notification is complete.

(d) The date on which the term of an agreement issued pursuant to this section begins shall be the date timber operations first commence, unless the agreement specifies a later beginning date.

1612. The department may suspend or revoke an agreement at any time if it determines that an entity is not in compliance with the terms of the agreement or fails to provide timely status reports as required by subdivision (g) of Section 1605. The department shall adopt regulations establishing the procedure for suspension or revocation of an agreement. The procedure shall require the department to provide to the entity a written notice that explains the basis for a suspension or revocation, and to provide the entity with an opportunity to correct any deficiency before the department suspends or revokes the agreement.

1613. If after receiving a notification, but before the department executes a final agreement, the director of the department informs the entity, in writing, that the activity described in the notification, or any activity or conduct by the entity directly related thereto, violates any provision of this code or the regulations that implement the code, the department may suspend processing the notification and subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the timelines specified in Section 1603 do not apply. This section ceases to apply if any of the following occurs:

(a) The department determines that the violation has been remedied.

(b) Legal action to prosecute the violation is not filed within the applicable statute of limitations.

(c) Legal action to prosecute the violation has been terminated.

1614. If the entity is required to perform work subject to this chapter pursuant to a court or administrative order or notice, the entity shall include the measures proposed by the department to protect fish and wildlife resources in the agreement. Those measures are not subject to arbitration.

1615. (a) A person who violates this chapter is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation.

(b) The civil penalty imposed pursuant to subdivision (a) is separate from, and in addition to, any other civil penalty imposed pursuant to this section or any other provision of the law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration all relevant

circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court may consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and, with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines that justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(e) (1) In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

(A) That irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued.

(B) That the remedy at law is inadequate.

(2) The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this chapter without the allegations and without the proof specified in paragraph (1).

(f) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003, and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of any legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

1616. Any agreement or any memorandum of understanding executed by the department pursuant to this chapter prior to January 1, 2004, shall be subject to, and shall be governed by, the provisions of this chapter that were in existence prior to that date. This section does not apply to paragraph (2) of subdivision (b) of Section 1602, requiring an

entity to provide a copy or other satisfactory evidence of an agreement attained prior to January 1, 1977, upon the request of the department.

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 737

An act to add Section 25722.5 to the Public Resource Code, relating to state purchases.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

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

(a) By enacting Senate Bill 1170 of the 2001–02 Regular Session (Chapter 912 of the Statutes of 2001), the Legislature established a state policy goal to reduce the energy consumption of the state vehicle fleet by 10 percent on or before January 1, 2005. In addition, that legislation amended Section 25000.5 of the Public Resources Code to establish a state transportation energy policy that results in the least environmental and economic cost to the state and includes, among other things, the goal of purchasing the cleanest and most efficient automobiles.

(b) Increasing the fuel efficiency of the state's vehicle fleet is a cost-effective way to reduce the state's expenditures on fuel.

(c) The ''California State Vehicle Fleet Fuel Efficiency Report,'' published by the State Energy Resources Conservation and Development Commission (Energy Commission), the State Air Resources Board, and the Department of General Services, in May 2003, made the following recommendations:

(1) State government should operate its own fleet of passenger automobiles and light-duty trucks using the most efficient fuels possible in those vehicles with the most advanced technologies.

(2) The state should, among other things, pursue the following strategies to reduce petroleum use in the state vehicle fleet:

(A) Use alternative fuels in bifuel natural gas and propane vehicles.

(B) Purchase high efficiency and hybrid vehicles.

(C) Seek purchase policy changes to maximize the inclusion of efficient vehicles.

(D) Expand the data collection regarding the state vehicle fleet.

(3) As a matter of policy, the state should discourage state offices, agencies, and departments from purchasing sport utility vehicles, unless the office, agency, or department documents a critical need for that vehicle.

SEC. 2. Section 25722.5 is added to the Public Resources Code, to read:

25722.5. (a) On or before January 1, 2005, in order to achieve the policy objectives set forth in Sections 25000.5 and 25722, the Department of General Services, in consultation with the commission and the State Air Resources Board, shall develop and adopt specifications and standards for all passenger cars and light-duty trucks that are purchased or leased on behalf of, or by, state offices, agencies, and departments. Authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, that are equipped with emergency lamps or lights described in Section 25252 of the Vehicle Code are exempt from the requirements of this section. The specifications and standards shall include the following:

(1) Minimum air pollution emission specifications that meet or exceed California's Ultra-Low Emission Vehicle II (ULEV II) standards for exhaust emissions (13 Cal. Code Regs. 1961). These specifications shall apply on January 1, 2006, for passenger cars and on January 1, 2010, for light-duty trucks.

(2) Notwithstanding any other provision of law, the utilization of procurement policies that enable the Department of General Services to accomplish the following:

(A) Evaluate and score emissions and fuel economy in addition to capital cost to enable the Department of General Services to choose the vehicle with the lowest life-cycle cost when awarding a state vehicle procurement contract.

(B) Maximize the purchase or lease of hybrid or ''Best in Class'' vehicles that are substantially more fuel efficient than the class average.

(C) Maximize the purchase or lease of available vehicles that meet or exceed California's Super Ultra-Low Emission Vehicle (SULEV) passenger car standards for exhaust emissions.

(3) In order to discourage the unnecessary purchase or leasing of a sport utility vehicle and a four-wheel drive truck, a requirement that each state office, agency, or department seeking to purchase or lease that vehicle, demonstrate to the satisfaction of the Director of General Services or to the entity that purchases or leases vehicles for that office, agency, or department, that the vehicle is required to perform an essential

function of the office, agency, or department. If it is so demonstrated, priority consideration shall be given to the purchase or lease of an alternatively fueled or hybrid sports utility vehicle or four-wheel drive vehicle.

(b) On or before December 31, 2005, each state office, agency, and department shall review its vehicle fleet and, upon finding that it is fiscally prudent, cost-effective, or otherwise in the public interest to do so, shall dispose of nonessential sport utility vehicles and four-wheel drive trucks from its fleet and replace these vehicles with more fuel efficient front-wheel drive passenger cars and trucks.

(c) To the maximum extent practicable, each state office, agency, and department that has bifuel natural gas and bifuel propane vehicles in its vehicle fleet shall use the respective alternative fuel in those vehicles.

(d) Commencing no later than January 1, 2005, the Director of General Services shall compile and maintain information on the nature of vehicles that are owned or leased by the state, including, but not limited to, all of the following:

(1) The number of passenger-type motor vehicles purchased or leased during the year, and the number owned or leased as of December 31 of each year.

(2) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year.

(3) The number of alternatively fueled vehicles and hybrid vehicles purchased or leased by the state during the year, and the total number owned or leased as of December 31 of each year.

(4) The justification provided for all sport utility vehicles and four-wheel drive trucks purchased or leased by the state and the specific office, department, or agency responsible for the purchase or lease.

(5) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year that are alternative fuel or hybrid vehicles.

(6) The number of light-duty trucks disposed under subdivision (b).

(7) The total dollars spent by the state on passenger-type vehicle purchases and leases, categorized by sport utility vehicle and nonsport utility vehicle, and within each of those categories, by alternative fuel, hybrid and other.

(e) Each state office, agency, and department shall cooperate with the Department of General Services data requests in order that the department may compile and maintain the information required in subdivision (d).

(f) As soon as practicable, the information compiled and maintained under subdivision (d) and a list of those state offices, agencies, and

departments that are not in compliance with subdivision (e) shall be made available to the public on the Department of General Services' Web site.

CHAPTER 738

An act to add and repeal Section 39614 of the Health and Safety Code, relating to air quality.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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 body of scientific evidence demonstrating health effects related to particulate matter exposure has grown tremendously over the past 10 years, and presents a compelling public health case for reducing emissions and exposures.

(2) Both coarse and fine particulate matter (PM 10 and PM 2.5, respectively) are linked in scientific literature to a range of serious health impacts, including premature mortality, acute and chronic bronchitis, asthma attacks and emergency room visits, upper respiratory illnesses, and days with work loss.

(3) Exposure to particulate pollution is particularly dangerous for sensitive groups including, but not limited to, the elderly, individuals with asthma and other lung illnesses, infants, and children.

(4) Recent scientific literature on particulate matter demonstrates serious health impacts in infants and children including, but not limited to, mortality, reduced birth weight, premature birth, asthma exacerbation, and acute respiratory infections.

(5) The state board recently reviewed the particulate matter air quality standard pursuant to the Children's Environmental Health Protection Act (Chapter 731 of the Statutes of 1999) and based on that review, tightened the existing PM 10 annual standard and added a stringent new PM 2.5 annual standard.

(6) The state board has adopted a statewide risk reduction plan for reducing diesel particulate matter emissions by 2010, however it is necessary to ensure the prompt implementation of that plan and its particulate reduction goals.

(7) One component of particulate matter pollution, diesel particulate matter, has been identified as a toxic air contaminant by the state board

based upon the cancer risk posed by public exposure to this pollutant. In order to be effective, control measures to reduce particulate pollution need to control not only diesel particulate and other directly emitted PM 10 and PM 2.5, but also control precursors that contribute to formation of particulate matter, including, but not limited to, oxides of nitrogen, sulfur oxide, reactive organic gases and ammonia.

(8) Data from the existing air monitoring network, emission inventory, and other scientific studies should be used to identify sources of particulate pollution and prioritize control measures for that pollution and its precursors.

(9) The United States Environmental Protection Agency has recently begun the process to implement the federal fine particulate standard and to designate area attainment status. However, attainment of the federal standards is at least a decade in the future and the federal standard is less stringent and protective of public health than the state particulate standard.

(b) The Legislature therefore declares that it is essential that the state board and the districts take readily available, feasible, and cost-effective measures to reduce the public's exposure to PM 2.5 and PM 10.

(c) It is the intent of the Legislature that the State Air Resources Control Board, and each air quality management district and air pollution control district in the state consider the impact of proposed control measures for PM 2.5 and PM 10 on other criteria pollutants when adopting the implementation schedule pursuant to Section 39614 of the Health and Safety Code.

SEC. 2. Section 39614 is added to the Health and Safety Code, to read:

39614. (a) For the purposes of this section, the following terms have the following meanings:

(1) ''Cost-effective'' or ''cost-effectiveness'' means either of the following, as applicable:

(A) For the state board, a determination using the standards, formulas, and criteria used by the state board to calculate cost-effectiveness for other regulations.

(B) For a district, a determination using the standards and process described in Section 40922.

(2) ''Implementation schedule'' means a schedule that specifies dates for final adoption, implementation, and sequencing of control measures pursuant to this section.

(3) ''Measures'' means any of the following:

(A) Emissions limits, control technologies, or performance standards designed to limit emissions for a source or source category.

(B) Examples of adopted state or local district regulations.

(C) Examples of programs.

(4) ''PM 2.5'' means particulate matter of 2.5 microns and smaller in size.

(5) ''PM 10'' means particulate matter of 10 microns and smaller in size.

(6) ''Programs'' means any state or local program that reduces either of the following:

(A) Smoke from agricultural or wood burning sources.

(B) Diesel emissions.

(b) On or before January 1, 2005, the state board, in consultation with the districts, and after at least one public workshop, shall develop and adopt at a public meeting a list of the most readily available, feasible, and cost-effective proposed control measures, based on rules, regulations, and programs existing in California as of January 1, 2004, that could be employed by the state board and the districts to reduce PM 2.5 and PM 10 and make progress toward attainment of state and federal PM 2.5 and PM 10 standards. The list shall include measures to reduce emissions from new and existing stationary, mobile, and area sources, and shall indicate whether those measures apply to new, modified, or existing sources. In developing the list, the state board shall take into account information it determines to be appropriate and relevant from emissions inventories, air monitoring data, and other scientific studies, including, but not limited to, information associated with compliance with the federal ambient air standards for particulate matter. The list shall include control measures for all of the following emission source categories:

(1) Stationary combustion sources.

(2) Woodstoves and fireplaces.

(3) Commercial grilling operations.

(4) Agricultural burning.

(5) Construction and grading operations.

(6) Diesel-powered engines used in stationary and mobile applications, including, but not limited to, control measures that do any of the following:

(A) Reduce heavy-duty vehicle idling.

(B) Require the use of ultra low-sulfur diesel fuel.

(C) Encourage, and require to the extent authorized by law, fleet turnover or the pull-ahead of new technology.

(D) Use public funds, including, but not limited to, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds to upgrade, retrofit, or replace heavy-duty engines with less polluting alternatives.

(E) Promote increased purchase and use by government agencies of low-emission heavy-duty vehicles and equipment.

(c) The state board shall specify in the list adopted pursuant to subdivision (a) whether a proposed control measure is intended to reduce

emissions of PM 2.5, PM 10, or both, and whether it is a proposed control measure for adoption by the state board or by a district. The state board and the districts shall adopt and implement only those control measures within their respective jurisdictions in accordance with applicable provisions of state law.

(d) (1) Not later than July 31, 2005, after at least one public workshop and a noticed public hearing, and in a manner otherwise in accordance with this section, the state board shall adopt an implementation schedule for the state measures on the list developed pursuant to subdivision (b) and each district shall adopt an implementation schedule for the most cost-effective local measures from the list for that district after prioritizing the measures based on the factors identified in subparagraph (A) of paragraph (2). The state board and each district, in carrying out the requirements of this section, shall adopt and implement control measures to reduce PM 2.5 and PM 10 from stationary, area, and mobile sources, and to make progress toward attainment of state and federal PM 2.5 and PM 10 standards.

(2) In developing an implementation schedule pursuant to this subdivision, the state board and each district shall do all of the following:

(A) Prioritize adoption and implementation of proposed control measures based on the effect individual control measures will have on public health, air quality, and emission reductions, and on the cost-effectiveness of each control measure.

(B) Strive to integrate the scheduling of control measures with the federal planning process for attainment of the federal ambient air quality standards for particulate matter in an efficient manner, to the extent that integration does not delay the adoption of control measures.

(3) An implementation schedule adopted by a district pursuant to this subdivision may not include a control measure that meets any of the following criteria:

(A) Is substantially similar to a control measure already adopted by the district, as determined by the district.

(B) Is substantially similar to a control measure scheduled for adoption by the district within two years of the adoption of the implementation schedule, as determined by the district.

(C) The district has determined there is a readily available, feasible, and cost-effective alternative control measure that will achieve an equivalent or greater emission reduction.

(D) Is intended to reduce emissions of a precursor to PM 2.5 or PM 10, if the district has adopted and implemented the measure or scheduled the measure for adoption within two years of the adoption of the implementation schedule as part of the district's ozone attainment plan pursuant to subdivision (a) or (b) of Section 40914.

(4) If a district determines that a readily available, feasible, and cost-effective alternative control measure exists as described in subparagraph (C) of paragraph (3), the district shall adopt that measure.

(e) Nothing in this section requires a district to adopt a control measure to further regulate emissions from any source that operates under, or requires a district to modify, either of the following programs:

(1) A market-based incentive program that complies with Section 39616.

(2) An interchangeable emission reduction credit program that is consistent with the methodology adopted by the state board pursuant to Section 39607.5.

(f) Nothing in this section is intended to alter or affect any of the following:

(1) The authority of the state board or a district to adopt a control measure for PM 2.5 and PM 10 pursuant to this division.

(2) The authority of the state board or a district over diesel-powered engines established pursuant to this division.

(3) The authority of a district to modify either of the programs described in paragraphs (1) or (2) of subdivision (e).

(4) The authority of a district to adopt measures necessary to attain state or federal air quality standards.

(g) In identifying control measures for woodstoves and fireplaces pursuant to paragraph (2) of subdivision (b), the state board shall include a consideration of rules and regulations encouraging the use of wood fuel appliances that meet the standards established in Subpart AAA of Part 60 of Title 40 of the Code of Federal Regulations.

(h) In adopting the list and implementation schedule pursuant to this section, the state board is not subject to the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) Not later than January 1, 2009, the state board shall prepare a report, and make available to the public, on the actions taken by the state board and local districts to comply with this section. The report shall include, but is not limited to, all of the following:

(1) Adopted and proposed rules.

(2) Regulations and programs.

(3) Air quality and public health impacts of state and district actions taken pursuant to this section.

(4) Cost-effectiveness of rules, regulations, and programs implemented pursuant to this section.

(5) Recommendations for further actions to assist in achieving state air quality standards for particulate matter.

(j) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 739

An act to add Section 66412.8 to the Government Code, and to add Section 21080.29 to the Public Resources Code, relating to the environment.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 66412.8 is added to the Government Code, to read:

66412.8. (a) A project located in Los Angeles County that is approved by a public agency before the effective date of the act adding this section is not in violation of any requirement of this division by reason of the failure to construct a roadway across the property transferred to the state pursuant to subdivision (c) of Section 21080.29 of the Public Resources Code and to construct a bridge over the adjacent Ballona Channel in Los Angeles County, otherwise required as a condition of approval of a vesting tentative map or a tentative map, if all of the following conditions apply:

(1) The improvements specified in subdivision (a) are not constructed, due in whole or in part, to the project owner's or developer's relinquishment of easement rights to construct the improvements.

(2) The easement rights specified in paragraph (1) are relinquished in connection with the acquisition by the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, of a wetlands project that is a minimum of 400 acres in size and located in the coastal zone.

(b) Where the easement rights have been relinquished, any municipal ordinance or regulation adopted by a charter city or a general law city shall be inapplicable to the extent that the ordinance or regulation requires construction of the transportation improvements specified in subdivision (a), or would otherwise require reprocessing or resubmittal of a permit or approval, including, but not limited to, a final recorded map, a vesting tentative map, or a tentative map, as a result of the transportation improvements specified in subdivision (a) not being constructed.

SEC. 2. Section 21080.29 is added to the Public Resources Code, to read:

21080.29. (a) A project located in Los Angeles County that is approved by a public agency before the effective date of the act adding this section is not in violation of any requirement of this division by reason of the failure to construct a roadway across the property transferred to the state pursuant to subdivision (c) and to construct a bridge over the adjacent Ballona Channel in Los Angeles County, otherwise required as a mitigation measure pursuant to this division, if all of the following conditions apply:

(1) The improvements specified in this subdivision are not constructed, due in whole or in part, to the project owner's or developer's relinquishment of easement rights to construct those improvements.

(2) The easement rights in paragraph (1) are relinquished in connection with the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, acquiring a wetlands project that is a minimum of 400 acres in size and located within the coastal zone.

(b) Where those easement rights have been relinquished, any municipal ordinance or regulation adopted by a charter city or a general law city shall be inapplicable to the extent that the ordinance or regulation requires construction of the transportation improvements specified in subdivision (a), or would otherwise require reprocessing or resubmittal of a permit or approval, including, but not limited to, a final recorded map, a vesting tentative map, or a tentative map, as a result of the transportation improvements specified in subdivision (a) not being constructed.

(c) (1) If the Wildlife Conservation Board of the Department of Fish and Game acquires property within the coastal zone that is a minimum of 400 acres in size pursuant to a purchase and sale agreement with Playa Capital Company, LLC, the Controller shall direct the trustee under the Amendment to Declaration of Trust entered into on or about December 11, 1984, by First Nationwide Savings, as trustee, Summa Corporation, as trustor, and the Controller, as beneficiary, known as the HRH Inheritance Tax Security Trust, to convey title to the trust estate of the trust, including real property commonly known as Playa Vista Area C, to the State of California acting by and through the Wildlife Conservation Board of the Department of Fish and Game for conservation, restoration, or recreation purposes only, with the right to transfer the property for those uses to any other agency of the State of California.

(2) This subdivision shall constitute the enabling legislation required by the Amendment to Declaration of Trust to empower the Controller to direct the trustee to convey title to the trust estate under the HRH Inheritance Tax Security Trust to the State of California or an agency thereof.

(3) The conveyance of the trust estate to the Wildlife Conservation Board pursuant to this subdivision shall supersede any duty or obligation imposed upon the Controller under the Probate Code or the Revenue and Taxation Code with respect to the disposition or application of the net proceeds of the trust estate.

SEC. 3. This bill does not violate the requirements of Section 16 of Article 4 of the California Constitution, in that, due to the unique requirements of the property acquired by the state pursuant to this act, a law of a general nature cannot be made applicable. The Legislature acknowledges that easement rights for the construction of certain transportation improvements required as a mitigation measure and condition of approval for an adjacent development project currently burden the property to which the state will get title, and construction of those improvements is inconsistent with the state's interest in the preservation of the property.

SEC. 4. This act shall not become operative unless Assembly Bill 859 is enacted and takes effect on or before January 1, 2004.

CHAPTER 740

An act to add Section 6533 to the Government Code, and to amend Section 1220 of, and to amend and repeal Section 1011.5 of, the Water Code, relating to water.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

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

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

(a) The problems associated with providing for the management of the Eastern San Joaquin County Groundwater Basin and the related provision of supplemental water supplies are peculiar to that area and public agencies overlying that basin have joined together to form the Eastern Water Alliance Joint Powers Agency.

(b) Legislation is needed to supplement the existing authority of member public agencies to allow the Eastern Water Alliance Joint Powers Agency to exercise powers to coordinate efforts to replenish and manage that critically overdrafted basin.

(c) With additional powers granted by the enactment of the act adding this section, the Eastern Water Alliance Joint Powers Agency will be able to do, among other things, all of the following:

(1) Provide opportunity for economic development within San Joaquin County by securing reliable future water supplies.

(2) Protect the natural resources within its boundaries and restore and enhance the environment, including the long-term protection of the basin.

(3) Develop and adopt a master plan designed to balance the use and enhancement of the basin through conjunctive management.

(4) Prepare a joint groundwater management plan for the member public agencies.

(5) Secure new and protect existing surface water rights required by its member public agencies for the implementation of the master plan.

(6) Apply for and obtain financing to proceed with projects identified in the master plan.

(7) Provide assistance to, supervise the construction of, and manage the operation of, facilities identified in the master plan for the benefit of the property owners and residents of member public agencies.

(8) Develop and manage a groundwater bank in accordance with the master plan.

SEC. 2. Section 6533 is added to the Government Code, to read:

6533. (a) The board of directors of the Eastern Water Alliance Joint Powers Agency may grant available funds to a member public agency for the purposes of assisting that member public agency in acquiring water if the board determines that that water supply will benefit the Eastern San Joaquin County Groundwater Basin as a whole and that that member public agency would otherwise be unable to acquire that water. Section 10753.1 of the Water Code applies to any groundwater

regulation under this section. As used in this section, the term ''groundwater'' has the same definition as set forth in subdivision (a) of Section 10752 of the Water Code.

(b) (1) For the purpose of supplementing the general operating revenues of the joint powers agency, upon the request of the board of directors of the joint powers agency, the Board of Supervisors of San Joaquin County may grant to the joint powers agency funds from the county general fund or Zone 2 of the San Joaquin County Flood Control and Water Conservation District that are available to carry out any purpose of the joint powers agency for which the county or district is authorized to expend funds.

(2) Nothing in paragraph (1) grants a preference to the joint powers agency over other public agencies for the purposes of receiving funds described in that paragraph.

(c) The joint powers agency shall deposit any county or district funds received pursuant to subdivision (b) in a separate account, and upon request of the county or district, shall demonstrate that all expenditures made from that account are being used only to carry out the powers, projects, and purposes of the joint powers agency and San Joaquin County or Zone 2 of the San Joaquin County Flood Control and Water Conservation District.

(d) Subject to Article XIII D of the California Constitution, the joint powers agency may impose a plan implementation charge, in accordance with this subdivision, on landowners within its boundaries for the property related service received from improved groundwater management and planning, and for improved groundwater levels and availability, provided by the joint powers agency. This plan implementation charge shall be a charge for water subject to the procedures and requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution, as follows:

(1) Each year the board of directors of the joint powers agency may fix a plan implementation charge that may not exceed the annual cost of carrying out the actions financed by the charge. The board of directors may use multiyear budgeting to determine the plan implementation charge for up to five years and adopt a schedule of charges for this time period.

(2) Before imposing the plan implementation charge, the board of directors of the joint powers agency shall identify the parcels of land within the joint powers agency to be benefited by the actions financed by the charge, the need for the plan implementation charge, and the amount of the charge to be imposed on each parcel. The amount of the charge upon any parcel may not exceed the proportional costs of the actions financed by the charge attributable to that parcel. The joint powers agency shall provide written notice of the plan implementation

charge and conduct a public hearing as provided in subdivision (a) of Section 6 of Article XIII D of the California Constitution. The joint powers agency may not impose the plan implementation charge if written protests against the charge are presented by a majority of the owners of the identified parcels upon which the charge will be imposed.

(3) (A) The plan implementation charge, at the option of the joint powers agency, may be collected on the tax rolls of the county in the same manner, by the same persons, and at the same time as, together with and not separate from, county ad valorem property taxes. In that event, of the amount collected pursuant to this paragraph, the county auditor may deduct that amount required to reimburse the county for its actual cost of collection.

(B) In lieu of that option, the joint powers agency shall collect plan implementation charges at the same time, together with penalties and interest at the same rates as is prescribed for the collection of county ad valorem property taxes.

(4) The amount of an unpaid plan implementation charge, together with any penalty and interest thereon, shall constitute a lien on that land as of the same time and in the same manner as does the tax lien securing county ad valorem property taxes.

(5) In lieu of a plan implementation charge being imposed on parcels within the boundaries of any individual member public agency of the joint powers agency, any member of the joint powers agency may determine by resolution to make payment to the joint powers agency of funds in an amount equal to the amount that would be raised by imposition of the plan implementation charge within the boundaries of that member, to be paid at the same time that the plan implementation charge would be collected if imposed.

(e) For the purposes of this section, "joint powers agency" means the Eastern Water Alliance Joint Powers Agency.

(f) For the purposes of this section, "Eastern San Joaquin County Groundwater Basin" means the Eastern San Joaquin County Basin described on pages 38 and 39 of the Department of Water Resources' Bulletin No. 118-80.

SEC. 3. Section 1011.5 of the Water Code as added by Section 1 of Chapter 779 of the Statutes of 1992, is amended to read:

1011.5. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and

maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets one of the following conditions:

(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:

(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.

(B) The groundwater management program establishes requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).

(C) The joint powers authority includes one or more of the water agencies overlying the contemplated points of groundwater extraction

and one or more of the water agencies that will share in the benefits to be derived from the local groundwater management program.

(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction:

(i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction.

(ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.

(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, ''substitution of an alternate supply'' means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

SEC. 4. Section 1011.5 of the Water Code, as added by Section 2 of Chapter 779 of the Statutes of 1992, is repealed.

SEC. 5. Section 1220 of the Water Code is amended to read:

1220. (a) No groundwater shall be pumped for export from within the combined Sacramento and Delta-Central Sierra Basins, as defined in the Department of Water Resources' Bulletin 160-74, unless the pumping is in compliance with a groundwater management plan that is adopted by ordinance pursuant to subdivision (b) by the county board of supervisors, in full consultation with affected water districts, and that is

subsequently approved by a vote in the counties or portions of counties that overlie the groundwater basin, except that water that has seeped into the underground from any reservoir, afterbay, or other facility of an export project may be returned to the water supply of the export project. For the purposes of this section, the county board of supervisors may designate a county water agency to act on its behalf if the directors of the county water agency are publicly elected and the county water agency encompasses the entire county. The county board of supervisors may revoke that designation by resolution at any time.

(b) Notwithstanding any other provision of law, a county board of supervisors whose county contains part of the combined Sacramento and Delta-Central Sierra Basins may adopt groundwater management plans to implement the purposes of this section.

(c) A county board of supervisors shall not exercise the powers authorized by this section within the boundaries of another local agency supplying water to that area without the prior agreement of the governing body of that other local agency.

(d) This section does not apply to groundwater pumping by the Eastern Water Alliance Joint Powers Agency for export from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, provided that the groundwater pumping is approved by San Joaquin County pursuant to its ordinances regulating the management and export of groundwater as these ordinances are in effect at the time of permit approval by San Joaquin County. Section 10753.1 applies to any groundwater regulation under this section. As used in this section, the term ''groundwater'' has the same definition as set forth in in subdivision (a) of Section 10752.

SEC. 6. The Legislature finds and declares that, because of the unique circumstances applicable only to the Eastern Water Alliance Joint Powers Agency, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 7. 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 741

An act to amend Sections 1103 and 1103.2 of the Civil Code, to amend Sections 714, 2536, 2540, 3031, 3031.2, 4654, 6596, 6596.1, 7145, 7147, 7149, 7149.05, 7149.2, 7149.8, 7360, 7360.1, 7361, 7363, 7380, 7852, 7881, 7921, 8032, 8033, 8033.2, 8033.5, 8034, 8035, 8036, 13005, 15101, and 15103 of, to amend the heading of Article 4 (commencing with Section 7360) of Chapter 2 of Part 2 of Division 6 of, to add Section 8039 to, and to repeal Sections 7149.1, 7149.15, 7362, 7852.21, 7852.3, and 7921.5 of, the Fish and Game Code, and to amend Sections 11502.5, 11703, 11704, 11707, 11903, 11904, 12021, 12103, 12104, 12105, 12201, 12202, 12252, 12401, 12404, 12818, 12841, 12841.1, and 14152 of, to add Section 12841.2 to, to repeal Sections 11515 and 11516 of, and to repeal and add Section 12812 of, the Food and Agricultural Code, to amend Section 8589.4 of, and to add Section 8589.5 to, the Government Code, to amend Sections 12975.7 and 12975.8 of, and to add and repeal Section 10089.45 of, the Insurance Code, to amend Section 25534 of, to add Section 25806 to, and to add Article 3.5 (commencing with Section 4138) to Chapter 1 of Part 2 of Division 4 of, the Public Resources Code, to amend Sections 1025.5, 1052, 1228.3, 1845, 2850, 5006, 5107, 6307, 6308, 6309, 13160.1, and 79505.5 of, to add Sections 1031, 2865, and 2868 to, to repeal Sections 1228.8 and 6308.5 of, and to repeal and add Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of, the Water Code, and to amend Section 1 of Chapter 240 of the Statutes of 2003 relating to resources, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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 continue in existence the Dam Inundation Mapping Program in the Office of Emergency Services in order to ensure that the citizens of the state are informed how to best prepare for and respond to natural disasters and other catastrophic events.

SEC. 2. Section 1103 of the Civil Code is amended to read:

1103. (a) Except as provided in Section 1103.1, this article applies to the transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property described in subdivision (c), or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1103.1, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent are required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone ''A'' or ''V'') designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding designated pursuant to Section 8589.5 of the Government Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to Section 51178 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone and is subject to the requirements of Section 51182 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(B) A map that includes the property has been provided to the local agency pursuant to Section 51178 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(4) A person who is acting as an agent for a transferor of real property that is located within an earthquake fault zone, designated pursuant to Section 2622 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2622 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(5) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, designated pursuant to Section 2696 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2696 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(6) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a wildland fire zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 4125 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county

assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) Any waiver of the requirements of this article is void as against public policy.

SEC. 3. Section 1103.2 of the Civil Code is amended to read:

1103.2. (a) The disclosures required by this article are set forth in, and shall be made on a copy of, the following Natural Hazard Disclosure Statement:

NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: _____

The transferor and his or her agent(s) disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone ''A'' or ''V'') designated by the Federal Emergency Management Agency.

Yes ____ No ____ Do not know and information not available from local jurisdiction ____

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes ____ No ____ Do not know and information not available from local jurisdiction ____

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes ____ No ____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes ____ No ____

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes ____ No ____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone)_____ Yes (Liquefaction Zone) _____
No ____ Map not yet released by state ____

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Transferor represents that the information herein is true and correct to the best of the transferor's knowledge as of the date signed by the transferor.

Signature of Transferor _____ Date _____

Agent represents that the information herein is true and correct to the best of the agent's knowledge as of the date signed by the agent.

Signature of Agent _____ Date _____
Signature of Agent _____ Date _____

Transferee represents that he or she has read and understands this document.

Signature of Transferee _____ Date _____

(b) If an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone, or wildland fire area map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a natural hazard area, the transferor or transferor's agent shall mark ''Yes'' on the Natural Hazard Disclosure Statement. The transferor or transferor's agent may mark ''No'' on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(c) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is no longer within a special flood hazard area, then the transferor or transferor's agent may mark ''No'' on the Natural Hazard Disclosure Statement, even if the map has not yet been updated. The transferor or transferor's agent shall attach a copy of the Letter of Map Revision to the disclosure statement.

(d) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is within a special flood hazard area and the location of the letter has been posted pursuant to

subdivision (g) of Section 8589.3 of the Government Code, then the transferor or transferor's agent shall mark ''Yes'' on the Natural Hazard Disclosure Statement, even if the map has not yet been updated. The transferor or transferor's agent shall attach a copy of the Letter of Map Revision to the disclosure statement.

(e) The disclosure required pursuant to this article may be provided by the transferor and the transferor's agent in the Local Option Real Estate Disclosure Statement described in Section 1102.6a, provided that the Local Option Real Estate Disclosure Statement includes substantially the same information and substantially the same warnings that are required by this section.

(f) The disclosure required by this article is only a disclosure between the transferor, the transferor's agents, and the transferee, and shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose.

(g) In any transaction in which a transferor has accepted, prior to June 1, 1998, an offer to purchase, the transferor, or his or her agent, shall be deemed to have complied with the requirement of subdivision (a) if the transferor or agent delivers to the prospective transferee a statement that includes substantially the same information and warning as the Natural Hazard Disclosure Statement.

SEC. 4. Section 714 of the Fish and Game Code is amended to read:

714. (a) In addition to Section 3031, 3031.2, 7149, 7149.05, or 7149.2 and notwithstanding Section 3037, the department shall issue lifetime sportsman's licenses pursuant to this section. A lifetime sportsman's license authorizes the taking of birds, mammals, fish, reptiles, or amphibia anywhere in this state in accordance with law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted pursuant to this code. A lifetime sportsman's license is not transferable. A lifetime sportsman's license does not include any special tags, stamps, or other entitlements.

(b) A lifetime sportsman's license may be issued to residents, as follows:

(1) To a person 62 years of age or over upon payment of a base fee of seven hundred thirty dollars ($730).

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a base fee of one thousand eighty dollars ($1,080).

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a base fee of one thousand two hundred dollars ($1,200).

(4) To a person less than 10 years of age upon payment of a base fee of seven hundred thirty dollars ($730).

(c) This section does not require a person less than 16 years of age to obtain a license to take fish, reptiles, or amphibia for purposes other than profit or to obtain a license to take birds or mammals, except as required by law.

(d) This section does not exempt an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sport hunting or sport fishing.

(e) Upon payment of a base fee of four hundred forty-five dollars ($445), a person holding a lifetime hunting license or lifetime sportsman's license shall be issued annually one deer tag application pursuant to subdivision (a) of Section 4332 and five wild pig tags issued pursuant to Section 4654. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) Upon payment of a base fee of two hundred ten dollars ($210), a person holding a lifetime hunting license or lifetime sportsman's license shall be entitled annually to the privileges afforded to a person holding a state duck stamp or validation issued pursuant to Section 3700 or 3700.1 and an upland game bird stamp or validation issued pursuant to Section 3682 or 3682.1. Lifetime privileges issued pursuant to this subdivision are not transferable.

(g) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 5. Section 2536 of the Fish and Game Code is amended to read:

2536. (a) It is unlawful for any person to engage in the business of guiding or packing, or to act as a guide for any consideration or compensation whatever, without first having secured a guide license from the department.

(b) An employee of a licensee who acts as a guide only in connection with, and within the scope of, his or her employment is exempt from the requirement of subdivision (a) if all of the following conditions are met:

(1) If the employment is subject to and the person is reported to the carrier of the employer's workers' compensation insurance.

(2) If the person is subject and reported to the state and federal taxing authorities for withholding of income tax.

(3) If the person is reported to the department, on forms provided by the department, as an employee of the guide prior to any contact with any person being guided, and a registration fee has been paid. The base fee for an employee guide registration for the 2004 license year shall be thirty-three dollars ($33), which shall be adjusted annually thereafter pursuant to Section 713.

(c) A person who is licensed in another state to provide guide services for the purposes of fishing is exempt from the requirements of subdivision (a) if all of the following conditions are met:

(1) The state in which the person is licensed grants a similar exemption to licensed guides who are residents of this state.

(2) Evidence of a valid guide license is provided to the department upon request.

(3) The person is engaged in the business of guiding only in conjunction with and during the term of a multistate fishing tournament approved by the appropriate agency in each of the affected states.

(4) The tournament sponsor provides to the department any information or documents necessary to administer and enforce this paragraph, as determined by the department, including, but not limited to, the identities of all guides participating in the tournament, verification of another state's license exemption, and information sufficient to determine the validity of another state's guide licenses.

(5) The tournament sponsor pays the department an amount, determined by the department, to be sufficient to cover the department's cost to administer and enforce this subdivision.

(6) The net proceeds of the tournament are used for resource management projects or habitat improvement projects, or both.

SEC. 6. Section 2540 of the Fish and Game Code is amended to read:

2540. (a) The base fee for a guide license issued to a resident is one hundred fifty dollars ($150).

(b) The base fee for a guide license issued to a nonresident is three hundred fifty dollars ($350).

(c) A guide license is valid for the license year beginning on February 1 and ending on January 31 of the succeeding year or, if issued after the beginning of the license year, for the remainder of that license year.

(d) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 7. Section 3031 of the Fish and Game Code is amended to read:

3031. (a) A hunting license, granting the privilege to take birds and mammals, shall be issued to any of the following:

(1) A resident of this state, 16 years of age or older, upon the payment of a base fee of thirty-one dollars and twenty-five cents ($31.25).

(2) A resident or nonresident less than 16 years of age, upon the payment of a base fee of eight dollars and twenty-five cents ($8.25).

(3) A nonresident, 16 years of age or older, upon the payment of a base fee of one hundred eight dollars and fifty cents ($108.50).

(4) A nonresident, 16 years of age or older, valid only for two consecutive days upon payment of the fee set forth in paragraph (1). A license issued pursuant to this paragraph is valid only for taking resident and migratory game birds, resident small game mammals, fur-bearing mammals, and nongame mammals, as defined in this code or in regulations adopted by the commission.

(5) A nonresident, valid for one day and only for the taking of domesticated game birds and pheasants while on the premises of a licensed game bird club, or for the taking of domesticated migratory game birds in areas licensed for shooting those birds, upon the payment of a base fee of fifteen dollars ($15).

(b) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 8. Section 3031.2 of the Fish and Game Code is amended to read:

3031.2. (a) In addition to Sections 714 and 3031 and notwithstanding Section 3037, the department shall issue lifetime hunting licenses under this section. A lifetime hunting license authorizes the taking of birds and mammals anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime hunting license is not transferable. A lifetime hunting license does not include any special license tags, license stamps, or fees.

(b) A lifetime hunting license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over, upon payment of a base fee of three hundred sixty-five dollars ($365).

(2) To a person 40 years of age or over, and less than 62 years of age, upon payment of a base fee of five hundred forty dollars ($540).

(3) To a person 10 years of age or over, and less than 40 years of age, upon payment of a base fee of six hundred dollars ($600).

(4) To a person less than 10 years of age, upon payment of a base fee of three hundred sixty-five dollars ($365).

(c) Nothing in this section requires a person less than 16 years of age to obtain a license to take birds or mammals except as required by law.

(d) Nothing in this section exempts an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sport hunting.

(e) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 9. Section 4654 of the Fish and Game Code is amended to read:

4654. (a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars ($15), for each wild pig tag.

(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars ($50), for each wild pig tag.

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 10. Section 6596 of the Fish and Game Code is amended to read:

6596. (a) In addition to a valid California sport fishing license and any other applicable license stamp issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for purposes other than for profit shall have a valid sport fishing ocean enhancement stamp permanently affixed to his or her fishing license. A sport fishing ocean enhancement stamp shall be issued upon payment of a base fee of three dollars and fifty cents ($3.50). A sport fishing license issued pursuant to paragraph (4) or (5) of subdivision (a) of Section 7149 is not subject to this subdivision.

(b) In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish therefrom, south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement stamp issued for that vessel that has not been suspended or revoked.

(c) Any person who takes, possesses aboard a boat, or lands any white sea bass for commercial purposes, south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement stamp issued to that person that has not been suspended or revoked.

(d) The base fee for a commercial fishing ocean enhancement stamp is thirty-five dollars ($35).

(e) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

(f) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 11. Section 6596.1 of the Fish and Game Code is amended to read:

6596.1. (a) In addition to a valid California sport fishing license and any other applicable license validation issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for purposes other than for profit shall have a valid sport fishing ocean enhancement validation permanently affixed to his or her fishing license. A sport fishing ocean enhancement validation shall be issued upon payment of a base fee of three dollars and fifty cents ($3.50). A sport fishing license issued pursuant to paragraph (4) or (5) of subdivision (a) of Section 7149.05 is not subject to this subdivision.

(b) In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish therefrom, south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement validation issued for that vessel that has not been suspended or revoked.

(c) Any person who takes, possesses aboard a boat, or lands any white sea bass for commercial purposes south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement validation issued to that person that has not been suspended or revoked.

(d) The base fee for a commercial ocean fishing enhancement validation is thirty-five dollars ($35).

(e) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

(f) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 12. Section 7145 of the Fish and Game Code is amended to read:

7145. (a) Except as otherwise provided in this article, every person 16 years of age or older who takes any fish, reptile, or amphibia for any purpose other than profit shall first obtain a license for that purpose and shall have that license on his or her person or in his or her immediate possession or where otherwise specifically required by law or regulation to be kept when engaged in carrying out any activity authorized by the license. In the case of a person diving from a boat, the license may be kept in the boat, or in the case of a person diving from the shore, the license may be kept within 500 yards on the shore.

(b) This section does not apply to an owner of real property, or the owner's invitee, who takes fish for purposes other than profit from a lake or pond that is wholly enclosed by that owner's real property and that is located offstream and not hydrologically connected to any permanent or intermittent waterway of the state.

This subdivision does not, and shall not be construed to, authorize the introduction, migration, stocking, or transfer of aquatic species, prohibited species, or any other nonnative or exotic species into state waters or waterways. This subdivision does not supersede or otherwise affect any provision of law that governs aquaculture, including, but not limited to, the operation of trout farms, the operation of other enterprises for profit, or any activity that is an adjunct to or a feature of, or that is operated in conjunction with, any other enterprise operated for profit, including private parks or recreation areas.

SEC. 13. Section 7147 of the Fish and Game Code is amended to read:

7147. The owner or operator of a boat or vessel licensed pursuant to Section 7920 shall not permit any person to fish from that boat or vessel unless that person has, in his or her possession, a valid California sport fishing license and any required license stamp or validation issued pursuant to this code.

SEC. 14. Section 7149 of the Fish and Game Code is amended to read:

7149. (a) A sport fishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of thirty-one dollars and twenty-five cents ($31.25).

(2) A nonresident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of eighty-four dollars ($84).

(3) A nonresident, 16 years of age or older, for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1).

(4) A resident or nonresident, 16 years of age or older, for two consecutive designated calendar days, upon payment of half of the fee set forth in paragraph (1). Notwithstanding Section 1053, more than one two-day license issued for different two-day periods may be issued to, or possessed by, a person at one time.

(5) A resident or nonresident, 16 years of age or older, for one designated day, upon payment of a base fee of ten dollars ($10).

(b) California sport fishing license stamps shall be issued by authorized license agents in the same manner as sport fishing licenses, and no compensation may be paid to the authorized license agent for issuing the stamps except as provided in Section 1055.

(c) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

(d) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 15. Section 7149.05 of the Fish and Game Code is amended to read:

7149.05. (a) A sport fishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of thirty-one dollars and twenty-five cents ($31.25).

(2) A nonresident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of eighty-four dollars ($84).

(3) A nonresident, 16 years of age or older for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1).

(4) A resident or nonresident, 16 years of age or older, for two designated days, upon payment of half the fee set forth in paragraph (1). Notwithstanding Section 1053, more than one single day license issued for different days may be issued to, or possessed by, a person at one time.

(5) A resident or nonresident, 16 years of age or older, for one designated day upon payment of a base fee of ten dollars ($10).

(b) California sport fishing license validations shall be issued by authorized license agents in the same manner as sport fishing licenses, and no compensation shall be paid to the authorized license agent for issuing the validations except as provided in Section 1055.1.

(c) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

(d) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 16. Section 7149.1 of the Fish and Game Code is repealed.

SEC. 17. Section 7149.15 of the Fish and Game Code is repealed.

SEC. 18. Section 7149.2 of the Fish and Game Code is amended to read:

7149.2. (a) In addition to Sections 714, 7149, and 7149.05, the department shall issue a lifetime sport fishing license under this section. A lifetime sport fishing license authorizes the taking of fish, amphibia, or reptiles anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sport fishing license is not transferable. A lifetime sport fishing license does not include any special license tags, license stamps, or fees.

(b) A lifetime sport fishing license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over, upon payment of a base fee of three hundred sixty-five dollars ($365).

(2) To a person 40 years of age or over and less than 62 years of age, upon payment of a base fee of five hundred forty dollars ($540) in 1998.

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a base fee of six hundred dollars ($600).

(4) To a person less than 10 years of age upon payment of a base fee of three hundred sixty-five dollars ($365).

(c) Nothing in this section requires a person less than 16 years of age to obtain a license to take fish, amphibia, or reptiles for purposes other than profit.

(d) Nothing in this section exempts a license applicant from meeting other qualifications or requirements otherwise established by law for the privilege of sport fishing.

(e) Upon payment of a base fee of two hundred forty-five dollars ($245), a person holding a lifetime sport fishing license or lifetime sportsman's license shall be entitled annually to the privileges afforded to a person holding a second-rod stamp or validation issued pursuant to Section 7149.4, or 7149.45, a sport fishing ocean enhancement stamp or validation issued pursuant to paragraph (1) of subdivision (a) of Section 6596 or 6596.1, one steelhead trout report restoration card issued pursuant to Section 7380, a Bay-Delta sport fishing enhancement stamp or validation issued pursuant to Section 7360 or 7360.1, and one salmon punch card issued pursuant to regulations adopted by the commission. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 19. Section 7149.8 of the Fish and Game Code is amended to read:

7149.8. (a) A person shall not take abalone from ocean waters unless he or she first obtains, in addition to a valid California sport fishing license and any applicable license validation or stamp issued pursuant to this code, an abalone report card, and maintains that report card in his or her possession while taking abalone.

(b) The department or an authorized license agent shall issue an abalone report card upon payment of a fee of fifteen dollars ($15) in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713.

SEC. 20. The heading of Article 4 (commencing with Section 7360) of Chapter 2 of Part 2 of Division 6 of the Fish and Game Code is amended to read:

Article 4. Bay-Delta Sport Fishing

SEC. 21. Section 7360 of the Fish and Game Code is amended to read:

7360. (a) A person shall not sport fish in the San Francisco Bay-Delta, unless he or she first obtains, in addition to a valid California sport fishing license and any applicable stamp issued pursuant to this code, a Bay-Delta sport fishing enhancement stamp, and affixes that stamp to his or her valid sport fishing license.

(b) The department or an authorized license agent shall issue a Bay-Delta sport fishing enhancement stamp upon payment of a base fee of five dollars ($5) in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713.

(c) A sport fishing license issued pursuant to paragraph (4) or paragraph (5) of subdivision (a) of Section 7149 is not subject to this section.

(d) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

SEC. 22. Section 7360.1 of the Fish and Game Code is amended to read:

7360.1. (a) A person shall not sport fish in the San Francisco Bay-Delta unless he or she first obtains, in addition to a valid California sport fishing license and any applicable validation issued pursuant to this code, a Bay-Delta sport fishing enhancement validation, and affixes that validation to his or her valid sport fishing license.

(b) The department or an authorized license agent shall issue a Bay-Delta sport fishing enhancement validation upon payment of a base fee of five dollars ($5), in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713.

(c) A sport fishing license issued pursuant to paragraph (4) of paragraph (5) of subdivision (a) of Section 7149 is not subject to this section.

(d) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

SEC. 23. Section 7361 of the Fish and Game Code is amended to read:

7361. Fees received by the department pursuant to Sections 7360 and 7360.1 shall be deposited in a separate account in the Fish and Game Preservation Fund. The department shall expend the funds in that account only for the purpose of the Bay-Delta Sport Fishing Enhancement Program, to be enacted by the Legislature during the 2003–04 Regular Session. The funds may not be expended until that program is enacted.

SEC. 24. Section 7362 of the Fish and Game Code is repealed.

SEC. 25. Section 7363 of the Fish and Game Code is amended to read:

7363. 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. 26. Section 7380 of the Fish and Game Code is amended to read:

7380. (a) In addition to a valid California sport fishing license and any applicable sport license stamp issued pursuant to this code, after January 1, 1993, a person taking steelhead trout in inland waters shall have in his or her possession a valid nontransferable steelhead trout catch report-restoration card issued by the department. The cardholder shall record certain fishing information on the card as designated by the department. The information shall immediately be recorded whenever the cardholder finishes fishing for the day, moves to another river or stream, or retains steelhead trout. The cardholder shall return the card to the department on a schedule or date established by the department.

(b) The base fee for the card shall be five dollars ($5) for the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713. The funds received by the department from the sale of the card shall be deposited in the Fish and Game Preservation Fund and shall be available for expenditure upon appropriation by the Legislature. The department shall maintain the internal accountability necessary to ensure that all restrictions and requirements pertaining to the expenditure of these funds are met.

(c) The commission shall adopt regulations necessary to implement this section. These regulations shall include, but not be limited to, procedures necessary to obtain appropriate steelhead trout resources

management information, a requirement that the card contain a statement explaining potential uses of the funds received as authorized by Section 7381, and a requirement that the cards be returned to the department.

SEC. 27. Section 7852 of the Fish and Game Code is amended to read:

7852. (a) The department shall issue a commercial fishing license to any resident who is 16 years of age or older, upon payment of a base fee of ninety-five dollars ($95) for each resident vessel crewmember or resident vessel operator.

(b) The department shall issue a commercial fishing license to any nonresident who is 16 years of age or older, upon payment of a base fee of two hundred eighty-five dollars ($285) for a nonresident vessel crewmember or nonresident vessel operator.

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(d) Nothing in this section affects any other provision of law relating to the employment of minors.

SEC. 28. Section 7852.21 of the Fish and Game Code is repealed.

SEC. 29. Section 7852.3 of the Fish and Game Code is repealed.

SEC. 30. Section 7881 of the Fish and Game Code is amended to read:

7881. (a) Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this state, or who brings fish into this state, or who, for profit, permits persons to fish therefrom, shall submit an application for commercial boat registration on forms provided by the department and shall be issued a registration number.

(b) A commercial boat registration may be issued to any resident owner or operator of a vessel upon payment of a base fee of two hundred fifty dollars ($250). The commercial boat registration shall be carried aboard the vessel at all times, and shall be posted in a conspicuous place.

(c) A commercial boat registration may be issued to any nonresident owner or operator of a vessel upon payment of a base fee of seven hundred fifty dollars ($750). The commercial boat registration shall be carried aboard the vessel at all times and shall be posted in a conspicuous place.

(d) If a registered vessel is lost, destroyed, or sold, the owner of the vessel shall immediately report the loss, destruction, or sale to the department.

(e) This section does not apply to any person required to be licensed as a guide pursuant to Section 2536.

(f) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 31. Section 7921 of the Fish and Game Code is amended to read:

7921. The base fee for a commercial passenger fishing boat license is two hundred fifty dollars ($250) in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713. The commercial passenger fishing vessel license shall be issued to the holder of a commercial boat registration issued pursuant to Section 7881.

SEC. 32. Section 7921.5 of the Fish and Game Code is repealed.

SEC. 33. Section 8032 of the Fish and Game Code is amended to read:

8032. (a) A commercial fish business license shall be issued which authorizes any or all activities described in Section 8033, 8034, 8035, or 8036. The annual fee for this license is one thousand three hundred seventy-three dollars ($1,373).

(b) Specialty licenses for part of, but not all, activities described in subdivision (a) shall be issued in five classes, as follows:

(1) Fish receiver's license, issued to any person engaged in the business of receiving fish as provided in Section 8033.

(2) Marine aquaria receiver's license, issued to any person engaged in the business of receiving live marine species indigenous to California waters from a person required to be a licensed commercial fisherman for the purpose of wholesaling or retailing those species for pet industry or hobby purposes as provided in Section 8033.1.

(3) Fish processor's license, issued to any person engaged in the business of processing fish as provided in Section 8034.

(4) Fish wholesaler's license, issued to any person who is engaged in the business of wholesaling fish as provided in Section 8035.

(5) Fish importer's license, issued to any person who is engaged in the business of importing fish as provided in Section 8036.

SEC. 34. Section 8033 of the Fish and Game Code is amended to read:

8033. (a) Except as provided in Section 8033.1 or 8033.5, or subdivision (c) of Section 8047, any person who purchases or receives fish for commercial purposes from a fisherman who is required to be licensed under Section 7850, or any person who removes fish from the point of the first landing that the person has caught for his or her own processing or sale, shall obtain a fish receiver's license.

(b) The annual fee for a fish receiver's license is five hundred forty-nine dollars ($549).

(c) A cooperative association of fishermen may be licensed as fish receivers.

SEC. 35. Section 8033.2 of the Fish and Game Code is amended to read:

8033.2. The annual fee for the marine aquaria receiver's license is one thousand three hundred seventy-three dollars ($1,373).

SEC. 36. Section 8033.5 of the Fish and Game Code is amended to read:

8033.5. (a) Any commercial fisherman who sells fish for other than marine aquaria pet trade or research purposes that he or she has taken to the ultimate consumer of that fish shall obtain a fisherman's retail license. The annual fee for a fisherman's retail license is sixty-nine dollars ($69).

(b) Any person required to obtain a license under this section who engages in any activity described in Section 8033, 8034, 8035, or 8036 shall also obtain an appropriate license to engage in those activities.

SEC. 37. Section 8034 of the Fish and Game Code is amended to read:

8034. (a) Any person who processes fish for profit shall obtain a fish processor's license. The annual fee for a fish processor's license is five hundred forty-nine dollars ($549).

(b) Any person required to obtain a license under this section who takes his or her own fish shall also obtain a fish receiver's license or a commercial fish business license.

SEC. 38. Section 8035 of the Fish and Game Code is amended to read:

8035. (a) Except for a person exempt under Section 8030 or an importer licensed under Section 8036, any person who, for the purpose of resale to other than the ultimate consumer, purchases or obtains fish from another person, who is required to be licensed as a fish receiver, fish processor, fish importer, or fish wholesaler under this article, shall obtain a fish wholesaler's license.

(b) The annual fee for a fish wholesaler's license is three hundred seventy-one dollars ($371).

(c) This section does not apply to persons required to have a marine aquaria receiver's license pursuant to Section 8033.1.

SEC. 39. Section 8036 of the Fish and Game Code is amended to read:

8036. Any person who purchases or receives fish, which are taken outside of this state and brought into this state by a person who is not a licensed commercial fisherman, for the purpose of resale to other than the ultimate consumer shall obtain a fish importer's license. The annual fee for a fish importer's license is five hundred forty-nine dollars ($549).

SEC. 40. Section 8039 is added to Fish and Game Code, to read:

8039. The fees specified in this article are applicable to the 2004 license year and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 41. Section 13005 of the Fish and Game Code is amended to read:

13005. (a) Notwithstanding Section 13001, the fees collected from lifetime sportsman's licenses and privileges issued pursuant to Section 714, lifetime hunting licenses and privileges issued pursuant to Section 3031.2, and lifetime sport fishing licenses and privileges issued pursuant to Section 7149.2 shall be deposited as follows:

(1) Twenty dollars ($20) from the initial issuance of each lifetime license shall be deposited in the Fish and Game Preservation Fund for use in accordance with Section 711.

(2) The balance of the fees collected shall be deposited in the Lifetime License Trust Account which is hereby created in the Fish and Game Preservation Fund. Except as provided in this section, that principal amount of the money in the account from the fee for a lifetime license shall not be used, except for investment.

(b) The money in the Lifetime License Trust Account may be transferred and invested through the Surplus Money Investment Fund and all interest shall accrue to the account pursuant to subdivision (g) of Section 16475 of the Government Code.

(c) Upon issuance of a lifetime license or lifetime privilege issued pursuant to Section 714, 3031.2, or 7149.2, the department shall transfer the following amounts from the Lifetime License Trust Account to the Fish and Game Preservation Fund:

(1) Twenty-nine dollars and twenty-five cents ($29.25) for an annual resident hunting license or an annual resident sport fishing license.

(2) Seven dollars and twenty-five cents ($7.25) for a junior hunting license.

(3) Nine dollars and twenty-five cents ($9.25) for one second-rod stamp or validation issued pursuant to Section 7149.4 or Section 7149.45.

(4) Two dollars and fifty cents ($2.50) for one Bay-delta sport fishing ocean enhancement stamp or validation issued pursuant to paragraph (1) of subdivision (a) of Section 6596 or paragraph (1) of subdivision (a) of Section 6596.1.

(5) Three dollars and fifty cents ($3.50) for one Bay-Delta sport fishing enhancement stamp or validation issued pursuant to Section 7360 or Section 7360.1.

(6) Three dollars and seventy-five cents ($3.75) for one steelhead trout catch report-restoration card issued pursuant to Section 7380.

(7) One dollar ($1) for one salmon punch card issued pursuant to regulations adopted by the commission.

(8) Nineteen dollars and twenty-five cents ($19.25) for a deer tag application issued pursuant to subdivision (a) of Section 4332.

(9) Eight dollars and seventy-five cents ($8.75) for five wild pig tags issued pursuant to Section 4654.

(10) Ten dollars ($10) for one state duck stamp or validation issued pursuant to Section 3700 or 3700.1.

(11) Six dollars and twenty-five cents ($6.25) for one upland game bird stamp or validation issued pursuant to Section 3682 or 3682.1.

SEC. 42. Section 15101 of the Fish and Game Code is amended to read:

15101. (a) The owner of each aquaculture facility shall register all of the following information with the department by March 1 of each year:

(1) The owner's name.

(2) The species grown.

(3) The location or locations of each operation or operations.

(b) The department may provide registration forms for this purpose, may establish a procedure for the review of the information provided to ensure that the operation will not be detrimental to native wildlife, and shall impose a registration fee of five hundred forty-nine dollars ($549) to recover the cost of reviewing new registrations. For renewing registrations, the department shall impose a registration fee of two hundred seventy-five dollars ($275). It is unlawful to conduct aquaculture operations or to culture approved species of aquatic plants and animals unless registered under this section. The registration fees specified in this section are applicable to the 2004 registration year and shall be adjusted annually thereafter pursuant to Section 713.

(c) The annual registration of information required by subdivision (b) is not a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 43. Section 15103 of the Fish and Game Code is amended to read:

15103. (a) In addition to the fees specified in Section 15101, a surcharge fee of four hundred twelve dollars ($412) shall be paid at the time of registration by the owner of an aquaculture facility if the gross annual sales of aquaculture products of the facility during the prior calendar year exceed twenty-five thousand dollars ($25,000).

(b) Each registered aquaculturist shall maintain sales and production records which shall be made available upon request of the department to assist the department in the administration of this chapter.

(c) Any person who fails to pay the surcharge fee required in this section at the time of registration shall be assessed a delinquency penalty in an amount equal to the fees prescribed in subdivision (a).

(d) The surcharge imposed pursuant to this section shall be adjusted annually pursuant to Section 713.

SEC. 44. (a) It is the intent of the Legislature that the annual Budget Act provide a General Fund amount equal to three million six hundred thousand dollars ($3,600,000) to be available for expenditure for agricultural worker outreach and education activities established in accordance with Section 12841.2 of the Food and Agricultural Code.

(b) It is the intent of the Legislature that the amount of funding provided to county agricultural commissioners each fiscal year by the Department of Pesticide Regulation from all sources shall equal twenty-two million dollars ($22,000,000), except for the 2003–04 fiscal year when it shall equal eighteen million dollars ($18,000,000).

SEC. 45. Section 11502.5 of the Food and Agricultural Code is amended to read:

11502.5. (a) The director may adopt regulations to establish the minimum requirements of education, continuing education, training, experience, and examination for applicants for any license or certificate, or renewal of any license or certificate, issued by the director pursuant to this division or Division 7 (commencing with Section 12500). The director shall not renew a license or certificate if the person who was issued the license or certificate did not complete the required continuing education during the period of validity of the license or certificate, and the person must take and pass the examination to be again issued such a license or certificate.

(b) The director shall establish, by regulation, fees for the Department of Pesticide Regulation's licensing and certification programs as established pursuant to this division or Division 7 (commencing with Section 12500). These programs include, but are not limited to:

(1) License and certificate examination, application, and renewal.

(2) Approval of continuing education courses and continuing education course providers.

(3) Changes related to any license or certificate, including, but not limited to, name or address changes, license or certificate replacement costs, duplicate copy of a license or certificate, and changes in qualified person, bond, insurance, or registered officers.

(4) Penalties for late payment of licensing and certification fees.

(c) The fees established pursuant to this section may include administrative costs, including overhead costs.

(d) The regulations shall provide that the examination fee may be charged to applicants who request the director to reschedule an examination due to the applicant's failure to obtain a passing score or failure to appear for the scheduled examination, and for scheduling an examination to amend a license.

(e) The fees established pursuant to this section shall be set so that the total revenue collected each fiscal year is sufficient to support the expenditure levels for these programs contained in the annual Budget Act. If the director determines that the revenue collected during the preceding year was greater than, or less than, the expenditure levels for these programs set forth in the Budget Act, the director may further adjust the current fees to compensate for the overcollection or undercollection.

(f) Funds collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund, and shall be available for expenditure by the department, upon appropriation, for the purposes of carrying out the programs established pursuant to this division or Division 7 (commencing with Section 12500).

(g) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted pursuant to this section shall remain in effect until amended by the director.

SEC. 46. Section 11515 of the Food and Agricultural Code is repealed.

SEC. 47. Section 11516 of the Food and Agricultural Code is repealed.

SEC. 48. Section 11703 of the Food and Agricultural Code is amended to read:

11703. (a) Except as otherwise provided in Sections 11704 and 11707, the application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5.

(b) If the applicant maintains any branch office in this state or outside this state and the applicant engages in the pest control business in this state from that branch office, the applicant shall pay an additional fee as prescribed by the director pursuant to Section 11502.5 for each of these branch offices.

SEC. 49. Section 11704 of the Food and Agricultural Code is amended to read:

11704. (a) A person who is regularly engaged in the business of maintenance gardening and who desires to engage in pest control for hire incidental to that business shall qualify for a pest control business license in the maintenance gardener category by passing the certified commercial applicators examination in both the laws and regulation and the landscape maintenance categories.

(b) The maintenance gardener category shall be limited to pest control in ornamental and turf plantings indoors, in commercial parks, or surrounding structures. A contract or verification that the pest control operation is incidental and that maintenance gardening is the primary purpose shall be immediately submitted to the commissioner or director upon request.

(c) An application for a license limited to the maintenance gardener category shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5.

SEC. 50. Section 11707 of the Food and Agricultural Code is amended to read:

11707. To any fee which is not paid by the date of expiration, there shall be added a penalty as prescribed by the director pursuant to Section 11502.5.

SEC. 51. Section 11903 of the Food and Agricultural Code is amended to read:

11903. A fee as prescribed by the director pursuant to Section 11502.5 shall accompany each application for an initial certificate.

SEC. 52. Section 11904 of the Food and Agricultural Code is amended to read:

11904. Every certificate shall expire on December 31 of the year for which it is issued. Certificates may be renewed before the expiration date by application to the director and upon payment of a fee as prescribed by the director pursuant to Section 11502.5. A penalty fee as prescribed by the director pursuant to Section 11502.5 shall be paid by an applicant who applies for renewal after the expiration date.

SEC. 53. Section 12021 of the Food and Agricultural Code is amended to read:

12021. An application for an agricultural pest control adviser license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5 to be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. All licenses issued under this article shall expire on December 31 of the year for which they are issued. Licenses may be renewed annually by the date of expiration through application in the form prescribed by the director and upon payment of a fee as prescribed by the director pursuant to Section 11502.5. A penalty as prescribed by the director pursuant to Section 11502.5 shall be assessed against any applicant who applies for a renewal of the license after the expiration date.

SEC. 54. Section 12103 of the Food and Agricultural Code is amended to read:

12103. An application for a license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5 to be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. All licenses issued under this article shall expire on December 31 of the year for which they are issued.

To the amount of the license fee shall be added an additional fee, in an amount prescribed by the director pursuant to Section 11502.5, for each branch salesyard, store, or sales location that is owned and operated by the applicant in this state or in other states when doing business from that out-of-state location regarding pesticides to be sold or delivered into or within this state.

SEC. 55. Section 12104 of the Food and Agricultural Code is amended to read:

12104. The license for a pest control dealer may be renewed annually upon application in the form prescribed by the director, accompanied by a fee as prescribed by the director pursuant to Section 11502.5, for each license and for each branch salesyard, store, or sales location that does business in the state, or that does business in this state from an out-of-state location as specified in Section 12103, by the date of expiration. These fees shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund.

SEC. 56. Section 12105 of the Food and Agricultural Code is amended to read:

12105. A penalty as prescribed by the director pursuant to Section 11502.5 shall be added to any fee that is not paid by the date of expiration.

SEC. 57. Section 12201 of the Food and Agricultural Code is amended to read:

12201. An application for a qualified applicator license shall be in a form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5.

SEC. 58. Section 12202 of the Food and Agricultural Code is amended to read:

12202. (a) All licenses issued pursuant to this chapter expire on December 31 of the year for which they are issued. Licenses may be renewed annually by the date of expiration through application in a form prescribed by the director and upon payment of a fee as prescribed by the director pursuant to Section 11502.5.

(b) A penalty as prescribed by the director pursuant to Section 11502.5 shall be assessed against any applicant who applies for renewal after the expiration date.

SEC. 59. Section 12252 of the Food and Agricultural Code is amended to read:

12252. (a) An application for a pest control dealer designated agent license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5.

(b) All licenses issued pursuant to this article shall expire on December 31 of the year for which they are issued.

(c) Licenses may be renewed annually upon application in the form prescribed by the director and upon payment of a fee as prescribed by the director pursuant to Section 11502.5. A penalty as prescribed by the director pursuant to Section 11502.5 shall be added to any license renewal fee that is not paid by the date of expiration of the previously issued license.

SEC. 60. Section 12401 of the Food and Agricultural Code is amended to read:

12401. (a) An application for a pesticide broker license, or renewal of a license, shall be in the form prescribed by the director. Each application for a license, or license renewal, shall state the name and address of the applicant, and any other information specified on the application or required by the director, and be accompanied by a fee as prescribed by the director pursuant to Section 11502.5.

(b) An additional license fee, or license renewal fee, as prescribed by the director pursuant to Section 11502.5, shall be paid for each branch location, whether within or outside of this state, of the applicant that sells or distributes into or within the state any pesticide products that are labeled for agricultural use.

SEC. 61. Section 12404 of the Food and Agricultural Code is amended to read:

12404. A penalty as prescribed by the director pursuant to Section 11502.5 shall be added to any license renewal fee that is not paid by the date of expiration of a previously issued license or license renewal.

SEC. 62. Section 12812 of the Food and Agricultural Code is repealed.

SEC. 63. Section 12812 is added to the Food and Agricultural Code, to read:

12812. (a) The director shall establish, by regulation, fees for the Department of Pesticide Regulation's registration program, as

established pursuant to this division. The fees shall include, but are not limited to, the following:

(1) Annual fees for each product submitted for registration.

(2) Penalties for the late payment of registration fees.

(3) Fees for amendments to registered products.

(b) The fees established pursuant to this section may include costs for administration and overhead in connection with administering the fees.

(c) The fees established pursuant to this section shall be set so that the total revenue collected each fiscal year is sufficient to support the expenditure levels for the registration program contained in the annual Budget Act.

(d) Funds collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund, and shall be available for expenditure by the department, upon appropriation by the Legislature, for the purposes of carrying out the department's pesticide registration program, as established pursuant to this division.

(e) The regulations adopted pursuant to this section, or any amendment or readoption thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director.

SEC. 64. Section 12818 of the Food and Agricultural Code is amended to read:

12818. If renewal is not applied for within one calendar month after the expiration of a registration, a penalty as prescribed by the director pursuant to Section 12812 shall be added to the registration fee.

SEC. 65. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for any person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) (1) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(2) For purposes of this section, ''active ingredient'' means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the registrant except as follows:

(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.

(2) No person is required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

(f) (1) The mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills ($0.01515) plus any additional assessment authorized by Section 12841.1.

(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills ($0.0175) plus any additional assessment authorized by Section 12841.1.

(C) From January 1, 2003, to December 31, 2003, inclusive, the rate shall be 17.5 mills ($0.0175).

(D) For all transactions on or after January 1, 2004, the actual rate shall be that set by regulations adopted by the director at a rate adequate to support the department's annual expenditures authorized in the annual Budget Act and provide a prudent reserve. The rate set by the director shall be no greater than 21 mills ($0.021). However, if regulations are not adopted before a payment is due, payment shall be made at the rate of 17.5 mills ($0.0175), and, upon adoption of regulations, payment of any additional amount due shall be made.

(2) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director. The director shall make available to the public, upon the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated, based, or determined the new rate.

(g) The revenue collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund and distributed as follows:

(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) Beginning April 1, 1998, an amount equal to the revenue derived from 6 mills ($0.006) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.

SEC. 66. Section 12841.1 of the Food and Agricultural Code is amended to read:

12841.1. (a) The director may collect an assessment, in addition to the mill assessment collected pursuant to Section 12841, for all pesticide sales for use in this state except for sales for use in this state of pesticides labeled solely for home, industrial, or institutional use. The director may only collect up to an additional three-fourths mill ($0.00075) per dollar of sales, in addition to the rate established pursuant to Section 12841, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the department pursuant to Section 11454.2. The necessity of this additional assessment shall be determined by the Secretary of Food and Agriculture, in consultation with the director, on an annual basis after consideration of all other revenue sources, including any reserves, which may be appropriated for this purpose. The secretary's written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the director by a time and in a manner prescribed by the director.

(b) The revenue collected pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds may not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for the department's revenue collection activities. If the director determines that a person is entitled to a refund of mill assessment funds that were collected pursuant to this section, the director shall inform the Secretary of Food and Agriculture of the amount of the refund due, which shall be reimbursed from the Department of Food and Agriculture Fund.

SEC. 67. Section 12841.2 is added to the Food and Agricultural Code, to read:

12841.2. (a) The Department of Pesticide Regulation shall create a program to conduct outreach and education activities for worker safety, environmental safety, school safety, and proper pesticide handling and use, to include, but not be limited to, the following issues and criteria:

(1) The program shall encompass all communities, including urban, rural, and suburban communities.

(2) All potential exposure opportunities, including household, industrial, and agricultural uses.

(3) Rights and procedures of workers and those potentially exposed to pesticides and how to file confidential complaints.

(b) The program shall be conducted in accordance with the department's environmental justice guidelines.

(c) The director shall appoint an advisory committee of interested stakeholders to provide input on the development and implementation of the program.

(d) This program shall compliment and not replace other outreach efforts currently in place not dealing with the issues addressed within this program.

SEC. 68. Section 14152 of the Food and Agricultural Code is amended to read:

14152. An application for a qualified applicator certificate shall be in a form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee as prescribed by the director pursuant to Section 11502.5. All certificates issued under this chapter shall expire on December 31 of the year for which they are issued. Certificates may be renewed annually by the date of expiration by application in the form prescribed by the director and upon payment of a fee as prescribed by the director pursuant to Section 11502.5. A penalty shall be assessed against any applicant who applies for renewal after the expiration date as prescribed by the director pursuant to Section 11502.5.

SEC. 69. Section 8589.4 of the Government Code is amended to read:

8589.4. (a) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding shown on an inundation map designated pursuant to Section 8589.5, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 70. Section 8589.5 is added to the Government Code, to read:

8589.5. (a) Inundation maps showing the areas of potential flooding in the event of sudden or total failure of any dam, the partial or total failure of which the Office of Emergency Services determines, after consultation with the Department of Water Resources, would result in death or personal injury, shall be prepared and submitted as provided in this subdivision within six months after the effective date of this section, unless previously submitted or unless the time for submission of those maps is extended for reasonable cause by the Office of Emergency Services. The local governmental organization, utility, or other public or private owner of any dam so designated shall submit to the Office of Emergency Services one map that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, or if the local governmental organization, utility, or other public or private owner of any dam shall determine it to be desirable, he or she shall submit three maps that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, at median-storage level, and at normally low-storage level. After submission of copies of the map or maps, the Office of Emergency Services shall review the map or maps, and shall return any map or maps that do not meet the requirements of this subdivision, together with recommendations relative to conforming to the requirements. Maps rejected by the Office of Emergency Services shall be revised to conform to those recommendations and resubmitted. The Office of Emergency Services shall keep on file those maps that conform to the provisions of this subdivision. Maps approved pursuant to this subdivision shall also be kept on file with the Department of Water Resources. The owner of a dam shall submit final copies of those maps to the Office of Emergency Services that shall immediately submit identical copies to the

appropriate public safety agency of any city, county, or city and county likely to be affected.

(b) (1) Based upon a review of inundation maps submitted pursuant to subdivision (a) or based upon information gained by an onsite inspection and consultation with the affected local jurisdiction when the requirement for an inundation map is waived pursuant to subdivision (d), the Office of Emergency Services shall designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The appropriate public safety agencies of any city, county, or city and county, the territory of which includes any of those areas, may adopt emergency procedures for the evacuation and control of populated areas below those dams. The Office of Emergency Services shall review the procedures to determine whether adequate public safety measures exist for the evacuation and control of populated areas below the dams, and shall make recommendations with regard to the adequacy of those procedures to the concerned public safety agency. In conducting the review, the Office of Emergency Services shall consult with appropriate state and local agencies.

(2) Emergency procedures specified in this subdivision shall conform to local needs, and may be required to include any of the following elements or any other appropriate element, in the discretion of the Office of Emergency Services:

(A) Delineation of the area to be evacuated.

(B) Routes to be used.

(C) Traffic control measures.

(D) Shelters to be activated for the care of the evacuees.

(E) Methods for the movement of people without their own transportation.

(F) Identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances.

(G) Identification and development of special procedures for the evacuation and care of people from unique institutions.

(H) Procedures for the perimeter and interior security of the area, including such things as passes, identification requirements, and antilooting patrols.

(I) Procedures for the lifting of the evacuation and reentry of the area.

(J) Details as to which organizations are responsible for the functions described in this paragraph and the material and personnel resources required.

(3) It is the intent of the Legislature to encourage each agency that prepares emergency procedures to establish a procedure for their review every two years.

(c) ''Dam,'' as used in this section, has the same meaning as specified in Sections 6002, 6003, and 6004 of the Water Code.

(d) Where both of the following conditions exist, the Office of Emergency Services may waive the requirement for an inundation map:

(1) Where the effects of potential inundation in terms of death or personal injury, as determined through onsite inspection by the Office of Emergency Services in consultation with the affected local jurisdictions, can be ascertained without an inundation map.

(2) Where adequate evacuation procedures can be developed without benefit of an inundation map.

(e) If development should occur in any exempted area after a waiver has been granted, the local jurisdiction shall notify the Office of Emergency Services of that development. All waivers shall be reevaluated every two years by the Office of Emergency Services.

(f) A notice may be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to inundation areas within the county.

SEC. 71. Section 10089.45 is added to the Insurance Code, to read:

10089.45. (a) The Seismic Safety Account is hereby created as a special account within the Insurance Fund. Money in the account may be appropriated by the Legislature for the purposes of this section to fund the department and the Seismic Safety Commission. Assessments imposed on insurers as a prorated percentage of premiums earned on property exposures for both commercial and residential insurance policies relative to the aggregate premiums earned on those exposures by all insurers shall be deposited in the account. The premiums earned for property exposures shall be as stated on lines 4 and 5.1 of the annual statement filed by each insurer pursuant to Section 900. The assessments shall be set annually based on earned premiums reported for the next preceding year by the department and calculated so that the funds in the account shall be sufficient to fund appropriations for support of the Seismic Safety Commission, for the actual collection and administrative costs of the department, and for the maintenance of an adequate reserve. The department shall submit the proposed assessments to the Seismic Safety Commission for its review at a regularly scheduled meeting of the commission.

(b) No assessment shall be levied on insurers with less than one hundred thousand dollars ($100,000) of annual direct premiums earned on property exposures for both commercial and residential insurance policies. The department may adjust this amount as necessary to minimize costs by excluding assessment amounts that are too small to

justify the cost of assessment and collection or if assessment or collection is impractical.

(c) An insurer, in its discretion, may recover this assessment in an equitable fashion from the insured. The insurer, upon receipt of an invoice, shall transmit payment to the department for deposit in the Seismic Safety Account. Any deficiency or excess in the amount collected in relation to the appropriation authority for the commission and the department shall be accounted for in the subsequent annual fee calculation. Any balance remaining in the Seismic Safety Account at the end of the fiscal year shall be retained in the account and carried forward to the next fiscal year.

(d) Funds in the Seismic Safety Account shall be distributed, upon appropriation, to the Seismic Safety Commission for the support of the commission and to the department for the actual administrative costs incurred in collecting the assessments.

(e) The department shall report annually to the Legislature, the Seismic Safety Commission, and the Department of Finance on the assessment calculation methodology employed.

(f) This section shall remain in effect until July 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2007, deletes or extends that date.

SEC. 72. Section 12975.7 of the Insurance Code is amended to read:

12975.7. (a) All moneys received by the commissioner in payment of lawful fees or reimbursements pursuant to this code shall be transmitted to the State Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. Unless specified in this code to be deposited in a different fund, all moneys received by the commissioner in fines, penalties, assessments, costs, or other sanctions shall be transmitted to the State Treasury for deposit in the General Fund.

(b) The money in the Insurance Fund received from the commissioner pursuant to this section is hereby appropriated to pay the refunds authorized by this code.

(c) The balance of the money in the Insurance Fund shall be used for the purposes specified in Section 10089.45, for the support of the Department of Insurance as authorized by the Budget Act, and for related cash flow needs.

SEC. 73. Section 12975.8 of the Insurance Code is amended to read:

12975.8. (a) The Insurance Fund shall, in addition to the funds specified in Section 12975.7, consist of all of the following:

(1) All moneys appropriated to the fund in accordance with law.

(2) All moneys deposited into the State Treasury from any source whatever in payment of lawful fees or reimbursements collected by the Department of Insurance.

(3) The balance remaining in the Insurance Fund at the end of the fiscal year, whether the moneys received are from an appropriation, fees, or from reimbursements for services rendered.

(b) (1) All moneys in the Insurance Fund credited to the Seismic Safety Account shall be subject to an annual appropriation each fiscal year for the purposes specified in Section 10089.45.

(2) All other moneys in the Insurance Fund shall be subject to an annual appropriation each fiscal year for the support of the Department of Insurance.

(3) If the current cash balance in the Seismic Safety Account is not adequate to fund the amount appropriated from it in the annual Budget Act, the Insurance Fund, upon enactment of the Budget Act, shall loan to the account the amount of the appropriation, and one half of this amount shall be transferred to the Seismic Safety Commission. The second half of the appropriated amount shall be transferred to the Seismic Safety Commission from the Seismic Safety Account on or before December 31 of each year. This loan shall be repaid by revenues collected pursuant to Section 10089.45.

(c) Any balance remaining in the Insurance Fund at the end of the fiscal year may be carried forward to the next succeeding fiscal year.

(d) Whenever the balance in the Insurance Fund is not sufficient to cover cash flow in the payment of authorized expenditures, the department may borrow such funds as may be necessary from whatever source and under terms and conditions as may be determined by the Director of Finance. Repayment shall be made from revenues received by the department for the same fiscal year for which the loan is made.

SEC. 74. Article 3.5 (commencing with Section 4138) is added to Chapter 1 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 3.5. State Responsibility Area Fire Protection Benefit Fees

4138. The Legislature finds and declares the following:

(a) The presence of homes and other structures within state responsibility areas poses an added burden to the state's wildland firefighting resources, the incremental cost of which should be borne by the owners of these homes and structures.

(b) Individual land owners within state responsibility areas receive a disproportionate benefit, which is greater than that realized by the state's citizens generally, from fire prevention and suppression services provided by the state.

(c) In most cases local firefighting entities are available to provide structural fire protection within state responsibility areas. It is not the intent of the Legislature to substitute the state's firefighting capability for these existing services or to supplant them. However, these entities

often do not possess sufficient equipment, personnel, and other necessary resources to meet the demand placed upon them in the event of large wild fires, and the state must at times provide additional firefighting resources to protect structures.

(d) It is the intent of the Legislature to provide for equitable distribution of the economic burden of fire prevention and suppression in state responsibility areas between the citizens of the state who generally benefit from those activities and those landowners who receive a specific benefit other than that general benefit.

(e) It is necessary to impose a fee based upon the reasonable value of the specific benefit received by landowners within state responsibility areas. Furthermore, the presence of homes and other structures on a given parcel, and the size of the parcel, constitute a reasonable relationship to fire prevention and suppression benefits received.

(f) Imposition of these fees is necessary to sustain service levels associated with the department's recent protection levels, to maintain sufficient depth of forces, and to maintain the ability to provide state assistance under various mutual aid arrangements.

(g) All revenues generated by state responsibility area fire protection benefit fees imposed under this article and used for the purposes for which they are imposed, are not proceeds of taxes subject to Article XIII B of the California Constitution.

(h) Nothing in this article requires the state to provide fire prevention and suppression services beyond those set forth in this chapter, or that landowners actually use the services provided.

4139. (a) A state responsibility area fire protection benefit fee shall be imposed annually on each parcel of land located, in whole or in part, within state responsibility areas, as defined in Section 4102, except that the benefit fee may not be imposed on any of the following:

(1) Parcels exempt from property taxes.

(2) Parcels owned by a public agency and located within the boundaries of the public agency.

(b) For the 2003–04 fiscal year, the benefit fee for each parcel shall be seventy dollars ($70) so that a total of thirty-five dollars ($35) per parcel may be collected pursuant to subdivision (c) of Section 4139; for the 2004–05 fiscal year, the benefit fee for each parcel shall be thirty-five dollars ($35).

(c) Benefit fees imposed for the 2003–04 fiscal year may be apportioned for that period of the fiscal year in which this section is in effect, but that apportionment may not be less than one half of a year. Benefit fees imposed for the 2003–04 fiscal year may be billed with the benefit fees imposed for the 2004–05 fiscal year and shall be payable by the owner of record on January 1 of the preceding fiscal year as shown on the county's secured property tax rolls. The department shall notify

each affected county treasurer by June 30, 2004, of the amount it anticipates owners to remit for the 2003–04 fiscal year.

(d) The department shall have access to all county assessment records for purposes of administering the benefit fees imposed pursuant to this article. The department may authorize individual counties to perform that work on its behalf.

(e) The benefit fees shall be collected by each county in the same manner and at the same time as secured property taxes. Notwithstanding any other provision of law, the county collecting the benefit fees may increase the benefit fees by an amount to cover its reasonable cost of levying, collection, and apportionment and may retain that increased amount.

(f) All laws relating to the levy, collection, and enforcement of county taxes apply to the benefit fees imposed pursuant to this article.

(g) It is essential that this article be implemented without delay. To permit timely implementation, the department may contract for services related to establishment of the fee collection process. For this purpose only, and for a period not to exceed 24 months, no provision of the Public Contract Code or any other provision of law related to public contracting applies.

4140. (a) Each county treasurer shall, not later than 30 days following the collection of state responsibility area fire protection benefit fees, remit all fees collected, except that portion retained pursuant to subdivision (e) of Section 4139, to the Treasurer for deposit in the State Responsibility Area Fire Protection Fund, which is hereby created in the State Treasury.

(b) Money deposited in the State Responsibility Area Fire Protection Fund shall be available, upon appropriation by the Legislature, to the department for the purpose of providing fire prevention and suppression benefits to landowners in state responsibility areas.

(c) If the total amount deposited in the State Responsibility Area Fire Protection Fund in any fiscal year exceeds the amount encumbered for fire protection and suppression services in state responsibility areas attributable to benefits conferred on parcels subject to the fees, the fees for the following fiscal year shall be reduced accordingly.

(d) Notwithstanding any other provision of law, the fees imposed during any fiscal year may be accounted for on an accrued basis. The department may borrow against anticipated revenues to the State Responsibility Area Fire Protection Fund to meet cash flow needs.

(e) Notwithstanding any other provision of law, a loan obtained pursuant to subdivision (d) shall be interest free. The department shall repay the loan in a timely manner from revenues received into the State Responsibility Area Fire Protection Fund.

(f) Notwithstanding any other provision of law, the State Responsibility Area Fire Protection Fund is exempt from Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3 of Title 2 of the Government Code.

4140.5. This article does not prohibit a local district from contracting with the department for the provision of structural or wildland fire suppression.

4140.7. (a) The director, in consultation with the board, local governments, local fire districts, state and local firefighter employee organizations, and other interested parties, the combination of which shall represent a geographic balance within state responsibility areas, shall convene a stakeholder group to evaluate the method by which fire protection and suppression services in state responsibility areas are provided, and to make a report containing the information listed in subdivision (c) available to the Legislature on or before January 1, 2006.

(b) (1) The director shall post notice of all of the stakeholder group's meetings on the department's Web site at least two weeks before each meeting.

(2) The stakeholder group's meetings shall be held in various locations throughout the state.

(3) All meetings of the stakeholder group shall be open to the public.

(c) The report shall contain at least all of the following:

(1) A summary of the current legal and financial relationships between the state and local governments and local fire districts, with respect to fire protection in state responsibility areas.

(2) All relevant information and policy options pertaining to whether increased responsibility, funding, and training, with respect to state responsibility areas, should be given to local governments and local fire districts.

(3) All relevant arguments pertaining to whether the collection of state fees for fire protection and suppression services in state responsibility areas in all areas of the state should continue in order to ensure that the beneficiaries of fire protection and suppression services are paying for those services.

(4) Recommendations on the conditions and terms by which a fee for fire suppression and protection services should be continued and in what amount, taking into account local conditions and the various circumstances under which fire protection and suppression services are currently structured.

(5) A recommendation of whether the designation and delineation of state responsibility areas can be improved to ensure that local governments and residents are aware of the boundaries of state responsibility areas.

SEC. 75. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by 24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars ($75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars ($50,000).

(c) A project owner shall commence construction of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) within 12 months after the project has been certified by the commission and after all accompanying project permits are final and administrative and judicial appeals have been completed. The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. The commission shall approve milestones within 60 days after project certification. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet the start-of-construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c) shall be made if the commission determines that any of the following criteria are met:

(1) The change in any deadline or milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The deadline or milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The deadline or milestone will be missed but the project owner demonstrates a good faith effort to meet the project deadline or milestone.

(4) The deadline or milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.

(5) The deadline or milestone will be missed for any other reason determined reasonable by the commission.

(f) The commission shall extend the start-of-construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project, less the amount paid pursuant to subdivision (a) of Section 25806. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

(g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, within 12 months after the project has been certified by the commission and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to

the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission.

(h) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority, the commission shall adopt new milestones for the project that allow the authority up to 24 months to start construction of the project or to start to meet the applicable deadlines or milestones. If the authority fails to begin construction in conformity with the deadlines or milestones adopted by the commission, without good cause, the certification may be revoked.

(i) (1) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority and the authority pursues the project without participation of the original certificate holder, the authority shall offer to reimburse the original certificate holder for the actual costs the original certificate holder incurred in permitting the project and in procuring assets associated with the license, including, but not limited to, major equipment and the emission offsets. In order to receive reimbursement, the original certificate holder shall provide to the commission documentation of the actual costs incurred in permitting the project. The commission shall validate those costs. The certificate holder may refuse to accept the offer of reimbursement for any asset associated with the license and retain the asset. To the extent the certificate holder chooses to accept the offer for an asset, it shall provide the authority with the asset.

(2) If the authority reimburses the original certificate holder for the costs described in paragraph (1), the original certificate holder shall provide the authority with all of the assets for which the original certificate holder received reimbursement.

(j) This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.

(k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Parts 292.101 to 292.602, inclusive), nor shall those provisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load. For the purposes of this subdivision, ''replacement'' of an existing facility includes, but is not limited to, a comparable project at a location different than the facility being replaced, provided that the commission certifies that the new project will result in the decommissioning of the existing facility.

(*l*) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to ''local publicly owned electric utilities'' as defined in subdivision (d) of Section 9604 of the Public Utilities Code whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.

(m) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may, in consultation with each other, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, 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, or general welfare.

SEC. 76. Section 25806 is added to the Public Resources Code, to read:

25806. (a) A person who submits to the commission an application for certification for a proposed generating facility shall submit with the application a fee of one hundred thousand dollars ($100,000) plus two hundred fifty dollars ($250) per megawatt of gross generating capacity of the proposed facility. The total fee accompanying an application may not exceed three hundred fifty thousand dollars ($350,000).

(b) A person who receives certification of a proposed generating facility shall pay an annual fee of fifteen thousand dollars ($15,000). The first payment of the annual fee is due on the date this section takes effect. For a facility certified on or after the effective date of this section, the first payment of the annual fee is due on the date the commission adopts the final decision. All subsequent payments are due by July 1 of each year

in which the facility retains its certification. The fiscal year for the annual fee is July 1 to June 30, inclusive.

(c) The fees in subdivisions (a) and (b) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce.

(d) No fee is required to accompany an application for certification, and no annual fee is required thereafter, for a generating facility that uses a renewable resource as its primary fuel or power source. For purposes of this subdivision, a renewable resource includes, but is not limited to, biomass, solar thermal, geothermal, digester gas, municipal solid waste conversion, landfill gas, ocean thermal, and solid waste converted to a clean burning fuel by using a noncombustion thermal process.

(e) The Energy Facility License and Compliance Fund is hereby created in the State Treasury. All fees received by the commission pursuant to this section shall be remitted to the Treasurer for deposit in the fund. The money in the fund shall be expended, upon appropriation by the Legislature, for processing applications for certification and for compliance monitoring.

SEC. 77. The Legislature finds and declares all of the following:

(a) The current fiscal crisis requires that the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50) be administered in the most cost-efficient manner consistent with ensuring public participation in the development of program guidelines and outreach and technical assistance to communities throughout the state.

(b) Notwithstanding Sections 79505.6, 79506.7, and 79575 of the Water Code, agencies responsible for the development of guidelines, technical assistance and reports pursuant to those sections shall use electronic communication, including publication of information on the Internet, shall determine the timing of the development of guidelines, and shall use any and all other efficiencies necessary to provide a public process reasonably calculated to provide access and relevant grant application and award information to interested persons within the budgetary and personnel constraints imposed by the state budget.

(c) It is the intent of the Legislature that, through the annual budget process, there be a review of progress undertaken by state agencies to develop guidelines to implement this act.

SEC. 78. Section 1 of Chapter 240 of the Statutes of 2003 is amended to read:

Sec. 1. The Legislature finds and declares the following:

In order to protect the intent of the voters in approving the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water

Code), it is necessary and desirable that, to the maximum extent possible, and where appropriate, the following principles apply to the implementation of that act:

(a) Guidelines developed for grant and loan programs pursuant to that act shall encourage integrated, multiple-benefit projects.

(b) Preference shall be given to funding safe drinking water and water quality projects that serve disadvantaged communities.

(c) Programs shall support projects that improve local and regional water supply reliability.

(d) For projects that affect water quality, preference shall be given to those projects that contribute expeditiously and measurably to the long-term attainment and maintenance of water quality standards.

(e) For projects that affect water quality, preference shall be given to funding projects that will eliminate or significantly reduce pollution into impaired waters and sensitive habitat areas, including areas of special biological significance.

(f) Projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including, but not limited to, the surface water ambient monitoring program carried out by the State Water Resources Control Board.

(g) Groundwater projects and projects that affect groundwater shall include groundwater monitoring requirements consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of the Water Code).

SEC. 79. Section 1025.5 of the Water Code is amended to read:

1025.5. (a) If both the lessor and lessee are private parties, the lessor shall file an application with the board for approval of the lease agreement and shall include in the application all of the following:

(1) The information and materials described in subdivisions (a) to (e), inclusive, of Section 1025.

(2) Other information that the state board determines is necessary to review the application.

(3) The application fee set pursuant to Section 1525.

(b) The board, after providing notice and opportunity for a hearing, may approve the lease if, in the judgment of the board, the lease would not operate to injure the legal users of water or unreasonably affect fish, wildlife, or other instream beneficial uses.

SEC. 80. Section 1031 is added to the Water Code, to read:

1031. A water lease pursuant to this chapter shall not take effect until the first annual fee, set pursuant to Section 1525, is paid, and the lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

SEC. 81. Section 1052 of the Water Code is amended to read:

1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

(b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not to exceed five hundred dollars ($500) for each day in which the trespass occurs.

(c) The Attorney General, upon request of the board, shall institute in the superior court in and for any county wherein the diversion or use is threatened, is occurring, or has occurred appropriate action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(d) Any person or entity committing a trespass as defined in this section may be liable for a sum not to exceed five hundred dollars ($500) for each day in which the trespass occurs. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(f) The remedies prescribed in this section are cumulative and not alternative.

SEC. 82. Section 1228.3 of the Water Code is amended to read:

1228.3. (a) Registration of water use pursuant to this article shall be made upon a form prescribed by the board. The registration form shall set forth all of the following:

(1) The name and post office address of the registrant.

(2) The source of water supply.

(3) The nature and amount of the proposed use.

(4) The proposed place of diversion.

(5) The place where it is intended to use the water.

(6) The time for completion of construction of diversion works and for complete application of the water to the proposed use.

(7) A certification that the registrant has contacted a representative of the Department of Fish and Game designated by that department for that purpose, has provided information to that department that is set forth in the registration form, and has agreed to comply with all lawful conditions, including, but not limited to, conditions upon the construction and operation of diversion works, required by the Department of Fish and Game. The certification shall include a copy of

any conditions required by the Department of Fish and Game pursuant to this paragraph.

(8) Any other information that may reasonably be required by the board.

(b) Registration of water use shall be deemed completed on the date that the form, executed in substantial compliance with the requirements of this section, and the registration fee specified in Section 1525 are received by the board.

(c) The board shall issue monthly a list of registrations filed under this article during the preceding calendar month. This list shall contain the information required by paragraphs (1) to (6), inclusive, of subdivision (a). The list shall set forth a date prior to which any interested person may file a written protest in opposition to the approval of a stockpond registration. That date shall be not later than 30 days from the date on which the list is issued. The board shall mail the monthly list of registrations filed to any person who so requests.

(d) Prior to the date set forth on the list required under subdivision (c), any interested person may file with the board a written protest in opposition to the approval of a stockpond registration. The protest shall clearly set forth the protestant's objections to the registered use based on interference with prior rights. The protest shall be served on the registrant by the protestant by mailing a duplicate copy of the protest to the registrant, or through service undertaken in another manner determined to be adequate by the board. The procedures set forth in Article 1.5 (commencing with Section 1345) of Chapter 5 shall be used for reviewing a protested registration.

SEC. 83. Section 1228.8 of the Water Code is repealed.

SEC. 84. Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code is repealed.

SEC. 85. Chapter 8 (commencing with Section 1525) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 8. WATER RIGHT FEES

Article 1. Fee Schedules

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use or livestock stockpond.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a permit or license.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

(7) An application for approval of a water lease agreement.

(8) A request for release from priority pursuant to Section 10504.

(9) An application for an assignment of a state-filed application pursuant to Section 10504.

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the

revenue levels set forth in the annual Budget Act for this activity. The board shall review and revise the fees each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003–04 fiscal year shall be assessed for the entire 2003–04 fiscal year.

1528. Each person or entity who files a proof of claim under Article 4 (commencing with Section 2575) of Chapter 3 of Part 3 shall pay a fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall establish the fees so as to be sufficient on the average to pay the administrative expenses of the board in processing, reviewing, and preparing a report on the claims submitted to the board.

1529. Each person or entity who files a notice pursuant to Part 5 (commencing with Section 4999) shall pay an annual fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall set the filing fees in an amount that is sufficient, on the average, to pay the administrative expenses of the board in processing, compiling, and retaining the notices.

1530. (a) The board shall adopt, by emergency regulation, the schedules of fees authorized under this article. The emergency regulation may include provisions concerning the administration and collection of the fees. The fee schedules may be graduated in accordance with the number of diversions or the amount of water involved. The board shall periodically adjust the amount of the fees specified in the schedule in accordance with this article.

(b) The emergency regulations adopted pursuant to this section, any amendment thereto, or subsequent adjustments to the regulations, shall be adopted by the 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 board, or any adjustment to an annual fee made by the board pursuant to this section, shall remain in effect until revised by the board.

Article 2. Collection and Enforcement

1535. (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request or proof of claim, other than an annual fee required after the period covered by the initial filing fee, shall be paid to the board.

(b) If a fee established under subdivision (b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the application, registration, petition, request, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

1536. All annual fees, other than the initial filing fee required in connection with the filing of an application, registration, petition, or request, or proof of claim, and all unpaid fees and expenses referred to the State Board of Equalization for collection pursuant to subdivision (b) of Section 1535 or Section 2868, shall be paid to the State Board of Equalization.

1537. (a) The State Board of Equalization shall collect any fee or expense required to be paid to the State Board of Equalization under this chapter.

(b) (1) The State Board of Equalization shall collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the board that a person or entity is required to pay a fee, or a determination by the board regarding the amount of that fee, is subject to review under Chapter 4 (commencing with Section 1120) of Part 1 and is not subject to a petition for redetermination by the State Board of Equalization.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the board improperly or erroneously calculated the amount of a fee, or incorrectly determined that the person or entity is subject to the fee, unless that determination has been set aside by the board or a court reviewing the determination of the board.

(4) This subdivision shall not be construed to apply Chapter 4 (commencing with Section 1120) of Part 1 to the adoption of regulations under this chapter or to a determination of expenses under Part 3 (commencing with Section 2000).

(c) The board shall provide to the State Board of Equalization the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

1538. In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the

unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.

1539. If a permit or license holder fails to pay an annual fee imposed pursuant to subdivision (a) of Section 1525 for a period of five years, the board may revoke the permit or license in accordance with the procedures for revocation specified in Section 1241.

1540. If the board determines that the person or entity on whom a fee or expense is imposed will not pay the fee or expense based on the fact that the fee payer has sovereign immunity under Section 1560, the board may allocate the fee or expense, or an appropriate portion of the fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed. The allocation of the fee or expense to these contractors does not affect ownership of any permit, license, or other water right, and does not vest any equitable title in the contractors.

1541. This article applies to any fee established or required to be paid under Article 1 (commencing with Section 1525), to any fee or expense set to cover the expenses of the board under Part 3 (commencing with Section 2000), and to any fee set under Section 13160.1 that is required to be deposited in the Water Rights Fund.

Article 3. Water Rights Fund

1550. There is in the State Treasury a Water Rights Fund, which is hereby established.

1551. All of the following shall be deposited in the Water Rights Fund:

(a) All fees, expenses, and penalties collected by the board or the State Board of Equalization under this chapter and Part 3 (commencing with Section 2000).

(b) All funds collected under Section 1052, 1845, or 5107.

(c) All fees collected under Section 13160.1 in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

1552. The money in the Water Rights Fund is available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue

and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(d) For expenditures by the board for the purposes of carrying out Section 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Section 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

Article 4. Sovereign Immunity

1560. (a) The fees and expenses established under this chapter and Part 3 (commencing with Section 2000) apply to the United States and to Indian tribes, to the extent authorized under federal or tribal law.

(b) If the United States or an Indian tribe declines to pay a fee or expense, or the board determines that the United States or the Indian tribe is likely to decline to pay a fee or expense, the board may do any of the following:

(1) Initiate appropriate action to collect the fee or expense, including any appropriate enforcement action for failure to pay the fee or expense, if the board determines that federal or tribal law authorizes collection of the fee or expense.

(2) Allocate the fee or expense, or an appropriate portion of the fee or expense, in accordance with Section 1540. The board may make this allocation as part of the emergency regulations adopted pursuant to Section 1530.

(3) Enter into a contractual arrangement that requires the United States or the Indian tribe to reimburse the board, in whole or in part, for the services furnished by the board, either directly or indirectly, in connection with the activity for which the fee or expense is imposed.

(4) Refuse to process any application, registration, petition, request, or proof of claim for which the fee or expense is not paid, if the board determines that refusal would not be inconsistent with federal law or the public interest.

SEC. 86. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

SEC. 87. Section 2850 of the Water Code is amended to read:

2850. At the time of the submission of proofs, the board shall collect from each claimant the fee established pursuant to Section 1528.

SEC. 88. Section 2865 is added to the Water Code, to read:

2865. During the pendency of any proceedings under this chapter, the board, after at least 20 days' notice to the parties, may order interim or partial payments of the expense to be made by the parties as the board deems proper and equitable under the circumstances.

SEC. 89. Section 2868 is added to the Water Code, to read:

2868. If a party fails to pay the expenses apportioned to that party when due, the board may refer the matter for collection of the unpaid expenses pursuant to Section 1536.

SEC. 90. Section 5006 of the Water Code is amended to read:

5006. Each notice shall be sworn to and shall be accompanied by a filing fee which shall be fixed by the board pursuant to Section 1529.

SEC. 91. Section 5107 of the Water Code is amended to read:

5107. (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who makes a material misstatement pursuant to this part may be liable civilly as provided in subdivision (c).

(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed five hundred dollars ($500) for each violation. In determining the appropriate amount, the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

(1) The extent of harm caused by the violation.

(2) The nature and persistence of the violation.

(3) The length of time over which the violation occurs.

(4) Any corrective action undertaken by the violator.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

SEC. 92. Section 6307 of the Water Code is amended to read:

6307. (a) (1) The department shall adopt, by regulation, a schedule of fees to cover the department's costs in carrying out the supervision of dam safety.

(2) The revenue generated by the fees imposed under this section shall be adjusted periodically for cost-of-living increases. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the director shall adjust the fees to compensate for the overcollection or undercollection of revenue. The department shall provide a schedule of fees to the Legislature and to every dam owner that has a permit or has applied for a permit, when any adjustment is made to the fees under this section.

(b) (1) An annual fee shall be paid on or before January 31, 2004, July 1, 2004, and on or before July 1 of each succeeding year, based upon a fixed rate and height of the dam, including all enlargements thereto, substantially completed by or in operation on June 30, 2003, and on June 30 of each succeeding year. The fees collected on December 31, 2003, will be credited toward the fees due January 31, 2004. The annual fee shall be four hundred dollars ($400) per dam, plus one hundred ten dollars ($110) per foot of height. This fee shall be periodically adjusted, as described in subdivision (a).

(2) A penalty plus interest, as set forth in Section 6428 of the Water Code, shall be imposed for fees received after July 1 in any year, except that for the year 2003, the penalty plus interest shall be imposed for any fees received after January 31, 2004.

(c) For the purposes of this section, ''height of the dam'' means the vertical distance, to the nearest foot, from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, as determined by the department, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation.

(d) Notwithstanding subdivision (b), the department shall limit the total annual fee per dam to not more than seventy-five dollars ($75) if both of the following apply:

(1) The dam has a storage capacity of not more than 100 acre-feet.

(2) The governing body of a private school or the governing board of a public school certifies that the dam is used as a subject of study by its students.

(e) (1) Notwithstanding subdivision (b), the department shall limit the total annual fee for dams or reservoirs located on farms or ranch properties to one hundred fifty dollars ($150) per dam, and sixteen dollars ($16) per foot of height.

(2) For purposes of this subdivision, ''farm'' has the same meaning as defined in Section 52262 of the Food and Agricultural Code.

(f) (1) Privately owned dams with less than 100 acre-feet of storage capacity shall be assessed an annual fee in accordance with paragraph (1) of subdivision (e).

(2) As used in this subdivision, ''privately owned'' does not include dams owned by municipalities, water districts or companies, irrigation districts, private, investor owned or publicly owned utilities, or public agencies.

SEC. 93. Section 6308 of the Water Code is amended to read:

6308. All fees, penalties, interest, fines, or charges collected by the department under this division shall be deposited in the Dam Safety Fund, which is hereby established in the State Treasury. The money in that fund shall be available to the department, upon appropriation by the Legislature, for the administration of the dam safety program.

SEC. 94. Section 6308.5 of the Water Code is repealed.

SEC. 95. Section 6309 of the Water Code is amended to read:

6309. The fees provided for in this chapter shall be required of any ''owner,'' as defined in Section 6005.

SEC. 96. Section 13160.1 of the Water Code is amended to read:

13160.1. (a) The state board may establish a reasonable fee schedule to cover the costs incurred by the state board and the regional boards in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act, as amended, and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended, with respect to water pollution control facilities.

(b) In providing for the recovery of costs incurred by the state board and regional board pursuant to this section, the state board may include in the fee schedule, but is not limited to including, the costs incurred in

reviewing applications for certificates, prescribing terms of certificates and monitoring requirements, enforcing and evaluating compliance with certificates and monitoring requirements, conducting monitoring and modeling, analyzing laboratory samples, reviewing documents prepared for the purpose of regulating activities subject to certificates, and administrative costs incurred in connection with carrying out these actions. The costs of reviewing applications for certificates include, but are not limited to, the costs incurred in anticipation of the filing of an application for a certificate, including participation in any prefiling consultation, and investigation or studies to evaluate the impacts of the proposed activity.

(c) (1) The fee schedule may provide for payment of a single fee in connection with the filing of an application, or for periodic or annual fees, as appropriate to the type of certificate issued and the activity authorized by the certificate.

(2) The fee schedule authorized by this section may impose a fee upon any of the following:

(A) Any person who files an application for a certificate.

(B) Any person who files with the state board or a regional board a notice of intent to file an application for a certificate, or who files with a federal agency a notice of intent to apply for a federal permit or license for which a certificate will be required under Section 401 of the Federal Water Pollution Control Act.

(C) Any person holding a federal permit or license for which a certificate has been issued.

(D) Any person required to send a notice of intent to the state board or a regional board to proceed with an activity permitted by a general permit subject to certification under Section 13160.

(d) (1) If the state board establishes a fee schedule pursuant to this section, the state board shall adopt the fee schedule by emergency regulation. The state board shall set the amount of total revenues collected each year through the fee authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The state board shall review and revise the fee each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. 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 annual Budget Act, the state board may further adjust the annual fees to compensate for the over or 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 remain in effect until revised by the state board.

(e) Any fees collected pursuant to this section in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission shall be deposited in the Water Rights Fund.

SEC. 97. Section 79505.5 of the Water Code is amended to read:

79505.5. As used in this division, the following terms shall have the following meanings:

(a) ''Disadvantaged community'' means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

(b) ''Matching funds'' means funds made available by nonstate sources, which may include, but are not limited to, donated services from nonstate sources.

(c) Notwithstanding subdivision (b), matching funds for a state agency may include state funds and services.

SEC. 98. The repeal of Section 1228.8 of the Water Code by this act, and the repeal of Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code, as that chapter read on December 31, 2003, by this act, does not terminate any of the following:

(a) Any obligation to pay fees due on or before January 1, 2004.

(b) Any obligation to pay for reimbursements due under contractual arrangements, if those reimbursements became due before January 1, 2004.

(c) The applicability of Section 1536 of the Water Code, as that section read on January 1, 2003, as applied to any application fee that was due before January 1, 2004, and was not paid when due.

SEC. 99. 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. In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs 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 the act, within the meaning of Section 17556 of the Government Code.

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 742

An act to amend Section 115840.5 of, and to amend and repeal Section 115825 of, the Health and Safety Code, and to amend Sections 21061.0.5, 21080.5, 21092, 21159.21, 48003, and 72410 of the Public Resources Code, relating to environmental health.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

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

SECTION 1. Section 115825 of the Health and Safety Code, as amended by Section 1 of Chapter 968 of the Statutes of 2002, is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840, 115840.5, 115841, and 115842, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

SEC. 2. Section 115825 of the Health and Safety Code, as amended by Section 2 of Chapter 968 of the Statutes of 2002, is repealed.

SEC. 3. Section 115840.5 of the Health and Safety Code is amended to read:

115840.5. (a) In the Modesto Reservoir, recreational uses shall not include recreation in which any participant has bodily contact with the water, unless both of the following conditions are satisfied:

(1) The water subsequently receives complete water treatment, in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection, before being used for domestic purposes. The disinfection shall include, but not be limited to, ozonation.

(2) The reservoir is operated in compliance with regulations of the department.

(b) The recreational use may be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir or required by the department, if those conditions and restrictions do not conflict with regulations of the department, and are required to further protect or enhance the public health and safety. The department shall, prior to requiring any additional conditions and restrictions, consult with the entity operating the water supply reservoir regarding the proposed conditions and restrictions at least 60 days prior to the effective date of those conditions or restrictions.

(c) The Modesto Irrigation District shall file, on or before January 1, 2002, with the Legislature, a report on the recreational uses at Modesto Reservoir and the water treatment program. The report shall include, but not be limited to, all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) Levels of methyl tertiary butyl ether at various reservoir locations on a monthly basis.

(3) A summary of available monitoring in the Modesto Reservoir watershed for giardia and cryptosporidium.

(4) The sanitary survey of the watershed and water quality monitoring plan.

(5) An evaluation of recommendations relating to removal and inactivation of cryptosporidium and giardia as specified in the department water permit dated October 28, 1997.

(6) Annual reports provided to the department, as required pursuant to Sections I and IV of the department water permit dated October 28, 1997.

(7) An evaluation of the impact on source water quality due to recreational activities on the Modesto Reservoir, including any microbiological monitoring.

(8) A summary of any activities between the district and the county for operation of recreational uses and facilities in a manner that optimizes the water quality.

(9) The reservoir management plan and the operations plan.

(10) The annual water quality reports submitted to consumers each year.

(d) If there is a change in operation of the treatment facility or a change in the quantity of water to be treated at the treatment facility, the department may require the Modesto Irrigation District to file a report that includes, but is not limited to, the information required pursuant to subdivision (c), and the district shall demonstrate to the satisfaction of the department that water quality will not be adversely affected.

SEC. 4. Section 21061.0.5 of the Public Resources Code is amended 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 qualified 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. 5. 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 an 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 a 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 a person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or a 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 may 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, a 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 may 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) An 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) An 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 an 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, a county agricultural commissioner is a state agency.

(j) For purposes of this section, an 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, 2004, 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 a person who files a written request for a notice with the agency.

SEC. 6. Section 21092 of the Public Resources Code is amended to read:

21092. (a) Any lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative

declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state

or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 7. Section 21159.21 of the Public Resources Code is amended to read:

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, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted 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.

SEC. 8. Section 48003 of the Public Resources Code is amended to read:

48003. The state board may not spend more than $^{1}/_{2}$ percent of the total revenues deposited, or anticipated to be deposited, in the account during a fiscal year for the administration of this chapter during that fiscal year.

SEC. 9. Section 72410 of the Public Resources Code, as added by Section 1 of Assembly Bill 121 of the 2003–04 Regular Session, is amended to read:

CHAPTER 2. DEFINITIONS

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) ''Board'' means the State Water Resources Control Board.

(c) ''Large passenger vessel'' or ''vessel'' means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) ''Marine waters of the state'' means ''coastal waters'' as defined in Section 13181 of the Water Code.

(e) ''Marine sanctuary'' means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(f) ''Oil'' has the meaning set forth in Section 8750.

(g) ''Oily bilgewater'' includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) ''Operator'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(i) ''Owner'' has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) ''Release'' means discharging or disposing of wastes into the environment.

(k) ''Sewage sludge'' has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

SEC. 10. Section 9 of this act shall become operative only if Section 72410 is added to the Public Resources Code by the enactment of AB 121 and becomes effective on or before January 1, 2004, and in that case, Section 9 of this act shall become operative January 1, 2004.

CHAPTER 743

An act to amend Sections 11155 and 18901.6 of, and to add Sections 18901.9 and 18901.10 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) Despite California's agricultural abundance, more than 2.2 million low-income adults in California cannot always afford enough food. About one out of every three adults experiences episodes of hunger, according to a recent UCLA survey of Californians' health status.

(b) Hungry Californians suffer from poor physical and emotional health, as well as a diminished capacity to learn and succeed in the workplace.

(c) The federal Food Stamp Program is an essential, cost effective tool in preventing hunger among hard-working families, including families making the difficult transition from welfare to work. It provides over $1.5 billion in federal food purchasing dollars to stimulate local economies throughout California.

(d) Only 49 percent of eligible people are participating in the Food Stamp Program, according to the U.S. Department of Agriculture. Red tape and bureaucracy limit participation among eligible Californians—particularly working families, who represent 70 percent of eligible households—from receiving federally funded benefits. The UCLA survey found that 80 percent of adults who are income-eligible

for food stamps and who are experiencing the actual pains of hunger are not receiving food stamps.

(e) California has not exercised certain federal options that would make the program more responsive to the needs of working families. These include transitional food stamps, reduction of unnecessary welfare office visits, and an increase in the value of motor vehicles that food stamp households can own.

(f) California's statewide fingerprint imaging system wastes money while deterring people from getting food stamps. The Bureau of State Audits recently determined that the state cannot justify the tens of millions of dollars spent on the implementation and annual operation of this system.

(g) The strategies contained in this act will help eliminate the barriers that prevent working families from getting food stamps. By taking these steps, the Legislature intends to prevent hunger among working families and children, as well as save money and increase efficiency within state and county governments.

SEC. 2. Section 11155 of the Welfare and Institutions Code is amended to read:

11155. (a) Notwithstanding Section 11257, in addition to the personal property or resources permitted by other provisions of this part, and to the extent permitted by federal law, an applicant or recipient for aid under this chapter including an applicant or recipient under Chapter 2 (commencing with Section 11200) may retain countable resources in an amount equal to the amount permitted under federal law for qualification for food stamps.

(b) The county shall determine the value of exempt personal property other than motor vehicles in conformance with methods established under the Food Stamp Program.

(c) (1) The value of licensed vehicles shall be the greater of the fair market value as provided in paragraph (3) or the equity value, as provided in paragraph (5), unless an exemption as provided in paragraph (2) applies.

(2) The entire value of any licensed vehicle shall be exempt if any of the following apply:

(A) It is used primarily for income-producing purposes.

(B) It annually produces income that is consistent with its fair market value, even if used on a seasonal basis.

(C) It is necessary for long distance travel, other than daily commuting, that is essential for the employment of a family member.

(D) It is used as the family's residence.

(E) It is necessary to transport a physically disabled family member, including an excluded disabled family member, regardless of the purpose of the transportation.

(F) It would be exempted under any of subparagraphs (A) to (D), inclusive, but the vehicle is not in use because of temporary unemployment.

(G) It is used to carry fuel for heating for home use, when the transported fuel or water is the primary source of fuel or water for the family.

(H) The equity value of the vehicle is one thousand five hundred one dollars ($1,501) or less.

(3) Each licensed vehicle that is not exempted under paragraph (2) shall be individually evaluated for fair market value, and any portion of the value that exceeds four thousand six hundred fifty dollars ($4,650) shall be attributed in full market value toward the family's resource level, regardless of any encumbrances on the vehicle, the amount of the family's investment in the vehicle, and whether the vehicle is used to transport family members to and from employment.

(4) Any licensed vehicle that is evaluated for fair market value shall also be evaluated for its equity value, except for the following:

(A) One licensed vehicle per adult family member, regardless of the use of the vehicle.

(B) Any licensed vehicle, other than those to which subparagraph (A) applies, that is driven by a family member under 18 years of age to commute to, and return from his or her place of employment or place of training or education that is preparatory to employment, or to seek employment. This subparagraph applies only to vehicles used during a temporary period of unemployment.

(5) For purposes of this section, the equity value of a licensed vehicle is the fair market value less encumbrances.

(d) The value of any unlicensed vehicle shall be the fair market value less encumbrances, unless an exemption applies under paragraph (2).

SEC. 3. Section 18901.6 of the Welfare and Institutions Code is amended to read:

18901.6. To the maximum extent allowable by federal law, each county welfare department shall provide transitional food stamp benefits to households terminating their participation in the CalWORKs program.

SEC. 4. Section 18901.9 is added to the Welfare and Institutions Code, to read:

18901.9. (a) For the purpose of eligibility under this chapter, the rules governing the resource value of motor vehicles shall be aligned with an alternative program allowed under federal food stamp law.

(b) The department shall seek any federal approvals necessary to implement subdivision (a).

(c) If any federal approvals are necessary to implement subdivision (a), that subdivision shall be implemented only upon the execution of a

declaration by the director, which shall be retained by the director, stating that any federal approvals necessary to implement subdivision (a) have been obtained.

SEC. 5. Section 18901.10 is added to the Welfare and Institutions Code, to read:

18901.10. To the extent permitted by federal law, and subject to the limitation in subdivision (c), each county welfare department shall, if appropriate, exempt a household from complying with face-to-face interview requirements for purposes of determining eligibility at initial application and recertification, according to the following:

(a) The county welfare department shall screen each household's need for exemption status at application and recertification.

(b) A person eligible for an exemption under this section may request a face-to-face interview to establish initial eligibility or to comply with recertification requirements .

(c) Nothing in this section shall limit a county's ability to require an applicant or recipient to make a personal appearance at a county welfare department office if the applicant or recipient no longer qualifies for an exemption or for other good cause.

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

CHAPTER 744

An act to amend Sections 1597.44 and 1597.465 of the Health and Safety Code, relating to care facilities.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

SECTION 1. Section 1597.44 of the Health and Safety Code is amended to read:

1597.44. A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than two infants are cared for during any time when more than six children are cared for.

(c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

SEC. 2. Section 1597.465 of the Health and Safety Code is amended to read:

1597.465. A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than three infants are cared for during any time when more than 12 children are being cared for.

(c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

CHAPTER 745

An act to add and repeal Section 49452.6 of the Education Code, relating to pupil health.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) Middle school pupils with obesity, acanthosis nigricans, ethnicity, and a family history of type 2 diabetes mellitus (DM2) have metabolic abnormalities consistent with the insulin resistance syndrome and are therefore at risk of developing DM2.

(b) Inexpensive, noninvasive clinical screening of pupils at school can provide early detection and identification of pupils at risk for DM2.

SEC. 2. Section 49452.6 is added to the Education Code, to read:

49452.6. (a) A three-year pilot program is hereby established, whereby any school district may participate in the program if the cost of the school district's participation is covered with local funding. Participating school districts shall, in conjunction with the scoliosis screening performed pursuant to Section 49452.5, and subject to Section 49451, and in addition to the physical examinations required pursuant to Sections 100275, 124035, and 124090 of the Health and Safety Code, provide for the screening of every female pupil in grade 7 and every male pupil in grade 8 for the risk of developing type 2 diabetes mellitus. The screening shall be in accord with standards and procedures developed by the State Department of Education in consultation with the State Department of Health Services' Diabetes Control Program, and adopted as regulations by the State Board of Education. The screening shall be performed and supervised only by qualified supervisors of health as specified in Sections 44871 to 44878, inclusive, and Sections 49422 and 49452.5, or pursuant to contract with an agency authorized to perform these services by the county superintendent of schools of the county in which the district is located pursuant to Sections 1750 to 1754, inclusive, and Section 49402, Section 101425 of the Health and Safety Code, and guidelines established by the State Board of Education. The screening shall be performed only by individuals who supervise, or who are eligible to supervise, the scoliosis screening and have been trained to conduct type 2 diabetes mellitus screening.

(b) The screening process shall be noninvasive and shall include, but shall not be limited to, the following:

(1) Measuring the height and weight of the pupil to calculate the pupil's body mass index.

(2) Examining the pupil's neck for acanthosis nigricans, a dark pigmentation that may indicate a high insulin level.

(3) Documenting the pupil's ethnicity, based on existing school records. Ethnicities that have the highest risk of developing type 2 diabetes mellitus include Latino, African American, Asian, American Indian, and Pacific Islander.

(4) Considering whether the pupil's existing health records indicate a family history of type 2 diabetes mellitus.

(c) In-service training shall be provided to any person who will be screening pupils for type 2 diabetes mellitus pursuant to this section, unless the person has a health care license that already qualifies him or her to perform that type of screening, and shall be conducted by appropriately licensed health care providers acting within the scope of their practice who have received specialized training in screening for the risk of developing type 2 diabetes mellitus.

(d) No person screening pupils for the risk of type 2 diabetes mellitus pursuant to this section shall solicit, encourage, or advise treatment or consultation by that person, or any entity in which that person has a financial interest, for the risk of type 2 diabetes mellitus or any other condition discovered in the course of the screening.

(e) The State Department of Education, in consultation with the State Department of Health Services' Diabetes Control Program, shall select and review all educational and notification materials to be sent to the parent or guardian of any pupil suspected of being at risk for developing type 2 diabetes mellitus. Each participating school district shall provide for the notification of the parent or guardian of any pupil suspected of being at elevated risk of developing type 2 diabetes mellitus, and the notification shall be provided by mail. The notification shall be culturally and linguistically appropriate, and shall include an explanation of the meaning of being at elevated risk of developing type 2 diabetes mellitus, the significance of exercise and weight control in preventing the development of it, information on aspects of the school environment that may contribute to obesity or type 2 diabetes, information on Medi-Cal, the Healthy Families Program, the Child Health and Disability Prevention Program, and other public services available for helping with prevention, and referrals for the pupil and the pupil's parent or guardian to appropriate community resources, which shall be provided pursuant to Sections 49426 and 49456. The State Department of Health Services' Diabetes Control Program may identify for the State Department of Education information which may be distributed to parents on where health assessments and health care, including free and low-cost, may be obtained in communities across the state.

(f) A pupil shall be considered at elevated risk of developing type 2 diabetes mellitus if the pupil's body mass index is above 85 percent and the screening process conducted pursuant to subdivision (b) indicates that the pupil also meets one of the risk factors described in paragraphs (2) to (4), inclusive, of that subdivision.

(g) No action of any kind in any court of competent jurisdiction may be filed against any individual authorized by this section to supervise or give a screening, by virtue of this section.

(h) It is the intent of the Legislature that no participating healing arts licentiate use the screening program for the generation of referrals or for his or her financial benefit. The Legislature does not intend to deny or limit the freedom of choice in the selection of an appropriate health care provider for treatment or consultation.

(i) Each school district that participates in the pilot program conducted pursuant to this section shall maintain data on the numbers of pupils screened and found to be at risk of type 2 diabetes mellitus. To the

extent possible, the school shall subsequently communicate with the parent or guardian of a pupil found to be at elevated risk of type 2 diabetes in order to determine the interventions, if any, that the parent or guardian has provided for the pupil. The school district shall maintain this information for the purpose of evaluation and reporting to the Legislature. Each school district that participates in the pilot program shall report to the State Department of Education by no later than June 30, 2006, regarding all of the following:

(1) Its findings concerning the extent to which the pupil population served by that school district is at risk of developing type 2 diabetes mellitus.

(2) How the data reported in paragraph (1) compare to previous assumptions about the extent to which the pupil population served by that school district is at risk of developing type 2 diabetes mellitus.

(3) Data on whether parents or guardians of pupils suspected of being at risk for developing type 2 diabetes mellitus sought any intervention as a result of the notification specified in subdivision (e).

(j) Nothing in this section applies to, or in any way precludes, the screening of pupils for type 2 diabetes mellitus by any nonparticipating school district.

(k) 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 before January 1, 2008, deletes or extends that date.

CHAPTER 746

An act to add Chapter 17 (commencing with Section 121348) to Part 4 of Division 105 of the Health and Safety Code, relating to health care.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) Post-exposure prophylaxis (PEP) was first developed as a means to prevent human immunodeficiency virus (HIV) infections following accidental needle stick exposures by health care workers. The treatment usually involves a four week regime of antiretroviral drugs, beginning within hours of the HIV exposure.

(b) PEP is used in some cases following sexual assault in an attempt to reduce the likelihood of HIV transmission. It is also used in combination with other methods in preventing mother-child

transmission of HIV. Increasingly, PEP is being used to reduce HIV infections following nonoccupational exposures in the general population.

(c) Recommendations for PEP to reduce the risk of HIV transmission are available for physicians who treat health care workers and victims of sexual assault in the State of California, as part of an overall comprehensive HIV prevention strategy. However, there are no guidelines addressing the use of PEP in nonassault exposures among the general population.

(d) Several countries, including France, Italy, Spain, Switzerland, Australia, and South Africa, as well as the States of Rhode Island and Massachusetts have PEP guidelines to prevent infection after sexual exposure for the general population.

(e) Guidelines from these entities vary on several key points and need to be studied to best meet the needs of California residents. These include the efficacy and safety of treatment regimens, risk assessment evaluation, duration of treatment, length of time between exposure and commencement of PEP treatment, patient counseling, health care provider education and support, as well as evaluation and patient tracking.

(f) Preventing the spread of HIV is of paramount importance to public health. A program providing PEP following nonoccupational exposures has recently been found to be effective. Therefore, the Office of AIDS in the State Department of Health Services should develop PEP recommendations for use in incidents of HIV exposure in the general population.

SEC. 2. Chapter 17 (commencing with Section 121348) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 17. POST-EXPOSURE PROPHYLAXIS

121348. (a) The department, through its Office of AIDS, shall appoint and convene a task force to develop recommendations for the use of post-exposure prophylaxis (PEP) in the general population, for the prevention of human immunodeficiency virus (HIV) infection.

(b) In performing its duties under this chapter, the task force shall review and consider PEP guidelines established by other jurisdictions, both in the United States and abroad.

121348.2. (a) The task force shall consist of no more than 10 members, including, but not be limited to, representatives with PEP experience from all of the following:

(1) Research scientists.

(2) Patients who have received PEP treatment.

(3) HIV physicians or clinicians.

(4) HIV prevention, education, or mental health providers.
(5) Public health officials.
(6) The Office of AIDS.
(7) Health plan representatives.

(b) A representative of the Office of AIDS shall serve as the chair of the task force and shall coordinate the proceedings and actions of the task force as necessary and appropriate.

(c) The department shall designate a physician member of the task force to serve as the cochair of the task force. The cochair shall consult with and advise the department and draft the recommendations for the use of PEP in the general population. The cochair shall serve without compensation or reimbursement for expenses beyond any existing contract with the department, consistent with subdivision (f).

(d) The task force shall be implemented only through existing state resources.

(e) Notwithstanding subdivision (d), the department may seek assistance, including financial and in-kind assistance, from other government, educational, and private sources for purposes of convening the task force and developing the recommendations required by this section.

(f) Representatives appointed to the task force shall serve without compensation and without reimbursement of expenses beyond any existing contract with the department. If the department is unable to secure representatives willing to serve on the task force without compensation or reimbursement for expenses beyond any existing contract with the department, the department may choose not to convene the task force or develop recommendations required by this section.

(g) The recommendations produced by the task force shall be approved by the department in consultation with the cochair and shall be made available through posting on the department's Web site. The department is not required to print or mail the recommendations.

CHAPTER 747

An act to add Section 14132.22 to the Welfare and Institutions Code, relating to health care.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) The Medi-Cal program, which is administered by the State Department of Health Services, has defined a scope of dental benefits that may limit a patient's choice of treatment.

(b) Dentists have an interest in providing patients with all currently available treatment options.

(c) As required by Section 1648.10 of the Business and Professions Code, the Dental Board of California has prepared a dental materials factsheet that is provided to every new patient and to patients of record prior to the performance of dental restoration work and that describes the various dental restorative materials. The patient acknowledges receipt of this factsheet with his or her signature. Additionally, the dentist needs to provide this factsheet only once to each patient unless the factsheet is subsequently revised.

(d) According to the Dental Board of California, the factsheet is intended to accomplish both of the following goals:

(1) Encourage discussion between patient and dentist about the selection of dental restorative materials best suited for the patient's dental needs.

(2) Demonstrate that dental professionals and the public are concerned about the safety of dental treatment and any potential health risks that are associated with the materials used to restore teeth.

(e) If a dentist, in consultation with the patient, determines that a treatment option not included in the benefits of the Denti-Cal program is within the standard of care, the dentist should have the choice of providing that treatment.

(f) The Dental Board of California enacted a resolution urging state policies that give low-income consumers the same choices in dental restorative materials as those enjoyed by all other consumers.

SEC. 2. Section 14132.22 is added to the Welfare and Institutions Code, to read:

14132.22. (a) For purposes of this section, dental restorative materials are limited to composite resin, glass ionomer cement, resin ionomer cement, and amalgam as described on the Dental Board of California's dental materials factsheet.

(b) A provider of services that includes the provision of dental restorative materials to a beneficiary under this chapter may recommend, after consultation with the beneficiary, a dental restorative material other than the covered benefit of amalgam.

(c) A provider may claim and receive the reimbursement rate for an amalgam restoration when using a different dental restorative material.

CHAPTER 748

An act to amend Section 2836.1 of the Business and Professions Code, and to amend, repeal, and add Section 11165 of the Health and Safety Code, relating to drugs.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

SECTION 1. Section 2836.1 of the Business and Professions Code is amended to read:

2836.1. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon under any of the following circumstances:

(1) When furnished or ordered incidental to the provision of family planning services.

(2) When furnished or ordered incidental to the provision of routine health care or prenatal care.

(3) When rendered to essentially healthy persons.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.

(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.

(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical

presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f) (1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.

(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

(g) (1) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed (1) at least six month's physician and surgeon-supervised experience in the furnishing or ordering of drugs or devices and (2) a course in pharmacology covering the drugs or devices to be furnished or ordered under this section.

(2) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term ''furnishing'' in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.

(i) ''Drug order'' or ''order'' for purposes of this section means an order for medication which is dispensed to or for an ultimate user, issued

by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 2. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, establish the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. CURES shall be implemented as a pilot project, commencing on July 1, 1997, to be administered concurrently with the existing triplicate prescription process, to examine the comparative efficiencies between the two systems.

(b) The CURES pilot project shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision, shall not be disclosed, sold, or transferred to any third party.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 4. Section 11165 is added to the Health and Safety Code, to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes

and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II or Schedule III controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall become operative on January 1, 2005.

SEC. 5. Sections 3 and 4 of this bill incorporate amendments to Section 11165 of the Health and Safety Code proposed by both this bill and SB 151. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends or makes other changes to Section 11165 of the Health and Safety Code, and (3) this bill is enacted after SB 151, in which case Section 2 of this bill and Section 17 of SB 151 shall not become operative.

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

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 749

An act to amend Sections 125085, 125090, and 125107 of, and to add Section 125092 to, the Health and Safety Code, relating to AIDS.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) Women, particularly women of color, are the fastest growing population with AIDS both in the United States and in California. The percentage of annually reported female AIDS cases in California has risen every year since 1983.

(b) Universal testing of pregnant women helps decrease the risk of perinatal transmission of HIV to newborns since treatment before, during, and after labor and delivery can help decrease the risk of transmission to the newborn.

(c) Even in cases where a woman receives no prenatal care, doctors can take steps to prevent HIV transmission to newborns. If the virus is identified in a woman during childbirth or immediately afterward, her baby can be treated during the first 24 hours after birth and alternatives to breastfeeding can be discussed, thereby substantially reducing the risk of mother-to-child transmission.

(d) Although the number of infants born with HIV since 1991 has decreased from 1,760 to as few as 280 infants nationwide in 2000, maternal transmission of HIV can be reduced with early detection and treatment.

(e) This year, the United States Centers for Disease Control and Prevention (CDC) revised their recommendations on HIV testing of pregnant women. The CDC now specifically urges the testing of all pregnant women for HIV within the routine battery of prenatal tests.

SEC. 2. Section 125085 of the Health and Safety Code is amended to read:

125085. (a) As early as possible during prenatal care, a blood specimen obtained pursuant to Section 125080 shall be submitted to a clinical laboratory licensed by the department or to an approved public health laboratory for a determination of rhesus (Rh) blood type and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(b) (1) In addition, as early as possible during prenatal care, a blood specimen obtained pursuant to Section 125080 shall be submitted to a clinical laboratory licensed by the department or to an approved public health laboratory for a test to determine the presence of hepatitis B surface antigen and the human immunodeficiency virus (HIV), and the results shall be reported to both of the following:

(A) The physician and surgeon or other person engaged in the prenatal care of the women or attending the woman at the time of delivery who ordered the test, and who shall subsequently inform the woman tested.

(B) A positive test result shall be reported to the local health officer, with the information required and within the timeframes established by the department, pursuant to Chapter 4 (commencing with Section 2500) of Title 17 of the California Code of Regulations.

(2) In the event that other tests to determine hepatitis B infection or HIV infection become available, the department may approve additional tests.

SEC. 3. Section 125090 of the Health and Safety Code is amended to read:

125090. (a) Subdivision (a) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge of the woman's blood type and accepts responsibility for the accuracy of the information.

(b) Subdivision (b) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge that the woman has previously been determined to be chronically infected with hepatitis B or human immunodeficiency virus (HIV) and accepts responsibility for the accuracy of the information.

(c) Prior to obtaining a blood specimen collected pursuant to subdivision (b) of Section 125085 or this section, the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery shall ensure that the woman is informed of the intent to perform a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to accept or refuse this testing. The acceptance of testing for HIV shall be documented in writing on a form developed by the department and the Office of AIDS

pursuant to Section 125092, or on a form that is substantially equivalent in content, and signed by the patient. A copy of this form shall be maintained in the medical record. A multispecialty medical group that provides health care services to enrollees of a health care service plan may use a form incorporating the information in this subdivision and in subdivision (d) instead of any separate form developed pursuant to Section 125092.

(d) If, during the final prenatal care standard medical tests, the medical records of the pregnant woman do not document a test for rhesus (Rh) blood type, a test for hepatitis B, or a test for HIV, the physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of labor or delivery shall obtain a blood specimen from the woman for the test that has not been documented. Prior to obtaining this blood specimen, the provider shall ensure that the woman is informed of the intent to perform the tests that have not been documented prior to this visit, including a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to accept or refuse the HIV test. The acceptance of testing for HIV shall be documented in writing on a form developed by the department and the Office of AIDS, or on a form that is substantially equivalent in content, as described in Section 125092, and signed by the patient. A copy of this form shall be maintained in the medical record. The blood shall be tested by a method that will ensure the earliest possible results, and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(e) After the results of the tests done pursuant to this section and Section 125085 have been received, the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or postpartum care at the time the results are received shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's and infant's health, including any followup care that is indicated. If the woman tests positive for HIV antibodies, she shall also receive, whenever possible, a referral to a provider, provider group, or institution specializing in prenatal care for HIV positive women. Health care providers are also strongly encouraged to seek consultation with other providers specializing in the care of pregnant HIV positive women.

(f) The provisions of Section 125107 for counseling are equally applicable to every pregnant patient covered by subdivisions (c) and (d).

SEC. 4. Section 125092 is added to the Health and Safety Code, to read:

125092. The department, in consultation with the Office of AIDS and with other stakeholders, including, but not limited to, representatives of professional medical and public health advocacy groups, providers of health care to women and infants infected with or exposed to HIV, and women living with HIV, shall develop culturally sensitive informational material adequate to fulfill the requirements of subdivisions (c) and (d) of Section 125090, in English, Spanish, and other languages used by the department when providing information to clients under the Medi-Cal program. This material shall also include information on available referral and consultation resources of experts in prenatal HIV treatment. This material shall be completed by December 31, 2004.

SEC. 5. Section 125107 of the Health and Safety Code is amended to read:

125107. (a) For purposes of this section, ''prenatal care provider'' means a licensed health care professional providing prenatal care within his or her lawful scope of practice. This definition shall not include a licensed health care professional who provides care other than prenatal care to a pregnant patient.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to every pregnant patient. This information and counseling shall include, but shall not be limited to, all of the following:

(1) A description of the modes of HIV transmission.

(2) A discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission.

(3) If appropriate, referral information to other HIV prevention and psychosocial services including anonymous and confidential test sites approved by the Office of AIDS.

(c) Nothing in this section shall be construed to require mandatory testing. Any documentation or disclosure of HIV related information shall be made in accordance with Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 regarding confidentiality and informed consent.

(d) Notwithstanding Section 125090 or any other provision of law, completion of a statement of acceptance of an HIV test pursuant to Sections 125090 and 125092 shall be sufficient documentation of consent for HIV testing of a pregnant woman or of a woman at the time of labor and delivery, and no laboratory or health care provider shall

require any additional written consent or written form as a condition for HIV testing from any woman who is reasonably believed to be pregnant, who is receiving prenatal care, or who is undergoing a panel of tests designated for prenatal patients.

CHAPTER 750

An act to add Division 1.5 (commencing with Section 1180) to the Health and Safety Code, relating to mental health.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

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

(a) The use of seclusion and behavioral restraints is not treatment, and their use does not alleviate human suffering or positively change behavior.

(b) Good milieu programs, interesting activities, and attention to every person's need for sufficient space all contribute to an environment in which the use of seclusion and behavioral restraints can be minimized.

(c) An ongoing commitment to varied, active, and stimulating choices of programming is important in addressing the problems of the use of seclusion and behavioral restraints in facilities.

(d) The commitment of managers and staff of facilities is essential to changing the culture of those facilities and reducing the use of seclusion and behavioral restraints, and providing a safer and more therapeutic environment for mental health patients, residents, and staff in California.

(e) In order to achieve the goal of a reduction in the use of seclusion and behavioral restraints, California must utilize the best practices developed in other states, and use the most efficient modern resources to accomplish these goals, including computerized data collection and analysis, public access to this information on the Internet, strategies for organizational change, staff training in risk assessment, crisis prevention and intervention, debriefing models, and recovery-based treatment models.

(f) Adequate numbers of staff are essential to reducing the use of seclusion and behavioral restraints in facilities; however, California faces a human resource crisis in mental health care. According to the California Mental Health Planning Council, vacancy rates for mental health positions in California exceed 30 percent. The Employment Development Department estimates that between 1998 and 2008, public

and private providers will need to fill 45,000 mental health positions. To address this crisis, the Little Hoover Commission has called for coordinated, integrated, and success-oriented strategies such as hiring clients, recruitment efforts, training academies, scholarships and loan forgiveness, workload analysis, and ensuring training in core competencies. The Legislature finds that resolving California's mental health workforce crisis is important to the goal of reducing the use of seclusion and behavioral restraints in California facilities.

(g) It is the intent of the Legislature in enacting this act to achieve a reduction in the use of seclusion and behavioral restraints in facilities in California.

SEC. 2. Division 1.5 (commencing with Section 1180) is added to the Health and Safety Code, to read:

DIVISION 1.5. USE OF SECLUSION AND BEHAVIORAL RESTRAINTS IN FACILITIES

1180. (a) The California Health and Human Services Agency, in accordance with their mission, shall provide the leadership and coordination necessary to reduce the use of seclusion and behavioral restraints in facilities that are licensed, certified, or monitored by departments that fall within its jurisdiction.

(b) The agency may make recommendations to the Legislature for additional facilities, or for additional units or departments within facilities, that should be included within the requirements of this division in the future, including, but not limited to, emergency rooms.

(c) At the request of the secretary, the involved state departments shall provide information regarding existing training protocols and requirements related to the utilization of seclusion and behavioral restraints by direct care staff who work in facilities within their jurisdiction. All involved state departments shall cooperate in implementing any training protocols established pursuant to this division. It is the intent of the Legislature that training protocols developed pursuant to this division be incorporated into existing training requirements and opportunities. It is further the intent of the Legislature that, to the extent feasible, the training protocols developed pursuant to Section 1180.2 be utilized in the development of training protocols developed pursuant to Section 1180.3.

(d) The secretary, or his or her designee, is encouraged to pursue federal and private funding to support the development of a training protocol that can be incorporated into the existing training activities for direct care staff conducted by the state, facilities, and educational institutions in order to reduce the use of seclusion and behavioral restraints.

(e) The secretary or his or her designee shall make recommendations to the Legislature on how to best assess the impact of serious staff injuries sustained during the use of seclusion or behavioral restraints, on staffing costs, and on workers' compensation claims and costs.

(f) The agency shall not be required to implement this section if implementation cannot be achieved within existing resources, unless additional funding for this purpose becomes available. The agency and involved departments may incrementally implement this section in order to accomplish its goals within existing resources, through the use of federal or private funding, or upon the subsequent appropriation of funds by the Legislature for this purpose, or all of these.

1180.1. For purposes of this division, the following definitions apply:

(a) ''Behavioral restraint'' means ''mechanical restraint'' or ''physical restraint'' as defined in this section, used as an intervention when a person presents an immediate danger to self or to others. It does not include restraints used for medical purposes, including, but not limited to, securing an intravenous needle or immobilizing a person for a surgical procedure, or postural restraints, or devices used to prevent injury or to improve a person's mobility and independent functioning rather than to restrict movement.

(b) ''Containment'' means a brief physical restraint of a person for the purpose of effectively gaining quick control of a person who is aggressive or agitated or who is a danger to self or others.

(c) ''Mechanical restraint'' means the use of a mechanical device, material, or equipment attached or adjacent to the person's body that he or she cannot easily remove and that restricts the freedom of movement of all or part of a person's body or restricts normal access to the person's body, and that is used as a behavioral restraint.

(d) ''Physical restraint'' means the use of a manual hold to restrict freedom of movement of all or part of a person's body, or to restrict normal access to the person's body, and that is used as a behavioral restraint. ''Physical restraint'' is any staff-to-person physical contact in which the person unwillingly participates. ''Physical restraint'' does not include briefly holding a person without undue force in order to calm or comfort, or physical contact intended to gently assist a person in performing tasks or to guide or assist a person from one area to another.

(e) ''Seclusion'' means the involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving. ''Seclusion'' does not include a ''timeout,'' as defined in regulations relating to facilities operated by the State Department of Developmental Services.

(f) ''Secretary'' means the Secretary of the California Health and Human Services Agency.

(g) ''Serious injury'' means any significant impairment of the physical condition as determined by qualified medical personnel, and includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, or injuries to internal organs.

1180.2. (a) This section shall apply to the state hospitals operated by the State Department of Mental Health and facilities operated by the State Department of Developmental Services that utilize seclusion or behavioral restraints.

(b) The State Department of Mental Health and the State Department of Developmental Services shall develop technical assistance and training programs to support the efforts of facilities described in subdivision (a) to reduce or eliminate the use of seclusion and behavioral restraints in those facilities.

(c) Technical assistance and training programs should be designed with the input of stakeholders, including clients and direct care staff, and should be based on best practices that lead to the avoidance of the use of seclusion and behavioral restraints, including, but not limited to, all of the following:

(1) Conducting an intake assessment that is consistent with facility policies and that includes issues specific to the use of seclusion and behavioral restraints as specified in Section 1180.4.

(2) Utilizing strategies to engage clients collaboratively in assessment, avoidance, and management of crisis situations in order to prevent incidents of the use of seclusion and behavioral restraints.

(3) Recognizing and responding appropriately to underlying reasons for escalating behavior.

(4) Utilizing conflict resolution, effective communication, deescalation, and client-centered problem solving strategies that diffuse and safely resolve emerging crisis situations.

(5) Individual treatment planning that identifies risk factors, positive early intervention strategies, and strategies to minimize time spent in seclusion or behavioral restraints. Individual treatment planning should include input from the person affected.

(6) While minimizing the duration of time spent in seclusion or behavioral restraints, using strategies to mitigate the emotional and physical discomfort and ensure the safety of the person involved in seclusion or behavioral restraints, including input from the person about what would alleviate his or her distress.

(7) Training in conducting an effective debriefing meeting as specified in Section 1180.5, including the appropriate persons to involve, the voluntary participation of the person who has been in seclusion or behavioral restraints, and strategic interventions to engage affected persons in the process. The training should include strategies that result in maximum participation and comfort for the involved

parties to identify factors that lead to the use of seclusion and behavioral restraints and factors that would reduce the likelihood of future incidents.

(d) (1) The State Department of Mental Health and the State Department of Developmental Services shall take steps to establish a system of mandatory, consistent, timely, and publicly accessible data collection regarding the use of seclusion and behavioral restraints in facilities described in this section. It is the intent of the Legislature that data be compiled in a manner that allows for standard statistical comparison.

(2) The State Department of Mental Health and the State Department of Developmental Services shall develop a mechanism for making this information publicly available on the Internet.

(3) Data collected pursuant to this section shall include all of the following:

(A) The number of deaths that occur while persons are in seclusion or behavioral restraints, or where it is reasonable to assume that a death was proximately related to the use of seclusion or behavioral restraints.

(B) The number of serious injuries sustained by persons while in seclusion or subject to behavioral restraints.

(C) The number of serious injuries sustained by staff that occur during the use of seclusion or behavioral restraints.

(D) The number of incidents of seclusion.

(E) The number of incidents of use of behavioral restraints.

(F) The duration of time spent per incident in seclusion.

(G) The duration of time spent per incident subject to behavioral restraints.

(H) The number of times an involuntary emergency medication is used to control behavior, as defined by the State Department of Mental Health.

(e) A facility described in subdivision (a) shall report each death or serious injury of a person occurring during, or related to, the use of seclusion or behavioral restraints. This report shall be made to the agency designated in subdivision (h) of Section 4900 of the Welfare and Institutions Code no later than the close of the business day following the death or injury. The report shall include the encrypted identifier of the person involved, and the name, street address, and telephone number of the facility.

1180.3. (a) This section shall apply to psychiatric units of general acute care hospitals, acute psychiatric hospitals, psychiatric health facilities, crisis stabilization units, community treatment facilities, group homes, skilled nursing facilities, intermediate care facilities, community care facilities, and mental health rehabilitation centers.

(b) (1) The secretary or his or her designee shall develop technical assistance and training programs to support the efforts of facilities to reduce or eliminate the use of seclusion and behavioral restraints in those facilities that utilize them.

(2) Technical assistance and training programs should be designed with the input of stakeholders, including clients and direct care staff, and should be based on best practices that lead to the avoidance of the use of seclusion and behavioral restraints. In order to avoid redundancies and to promote consistency across various types of facilities, it is the intent of the Legislature that the technical assistance and training program, to the extent possible, be based on that developed pursuant to Section 1180.2.

(c) (1) The secretary or his or her designee shall take steps to establish a system of mandatory, consistent, timely, and publicly accessible data collection regarding the use of seclusion and behavioral restraints in all facilities described in subdivision (a) that utilize seclusion and behavioral restraints. In determining a system of data collection, the secretary should utilize existing efforts, and direct new or ongoing efforts, of associated state departments to revise or improve their data collection systems. The secretary or his or her designee shall make recommendations for a mechanism to ensure compliance by facilities, including, but not limited to, penalties for failure to report in a timely manner. It is the intent of the Legislature that data be compiled in a manner that allows for standard statistical comparison and be maintained for each facility subject to reporting requirements for the use of seclusion and behavioral restraints.

(2) The secretary shall develop a mechanism for making this information, as it becomes available, publicly available on the Internet. For data currently being collected, this paragraph shall be implemented as soon as it reasonably can be achieved within existing resources. As new reporting requirements are developed and result in additional data becoming available, this additional data shall be included in the data publicly available on the Internet pursuant to this paragraph.

(3) At the direction of the secretary, the departments shall cooperate and share resources for developing uniform reporting for all facilities. Uniform reporting of seclusion and behavioral restraint utilization information shall, to the extent possible, be incorporated into existing reporting requirements for facilities described in subdivision (a).

(4) Data collected pursuant to this subdivision shall include all of the data described in paragraph (3) of subdivision (d) of Section 1180.2.

(5) The secretary or his or her designee shall work with the state departments that have responsibility for oversight of the use of seclusion and behavioral restraints to review and eliminate redundancies and

outdated requirements in the reporting of data on the use of seclusion and behavioral restraints in order to ensure cost-effectiveness.

(d) Neither the agency nor any department shall be required to implement this section if implementation cannot be achieved within existing resources, unless additional funding for this purpose becomes available. The agency and involved departments may incrementally implement this section in order to accomplish its goals within existing resources, through the use of federal or private funding, or upon the subsequent appropriation of funds by the Legislature for this purpose, or all of these.

1180.4. (a) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall conduct an initial assessment of each person prior to a placement decision or upon admission to the facility, or as soon thereafter as possible. This assessment shall include input from the person and from someone whom he or she desires to be present, such as a family member, significant other, or authorized representative designated by the person, and if the desired third party can be present at the time of admission. This assessment shall also include, based on the information available at the time of initial assessment, all of the following:

(1) A person's advance directive regarding deescalation or the use of seclusion or behavioral restraints.

(2) Identification of early warning signs, triggers, and precipitants that cause a person to escalate, and identification of the earliest precipitant of aggression for persons with a known or suspected history of aggressiveness, or persons who are currently aggressive.

(3) Techniques, methods, or tools that would help the person control his or her behavior.

(4) Preexisting medical conditions or any physical disabilities or limitations that would place the person at greater risk during restraint or seclusion.

(5) Any trauma history, including any history of sexual or physical abuse that the affected person feels is relevant.

(b) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may use seclusion or behavioral restraints for behavioral emergencies only when a person's behavior presents an imminent danger of serious harm to self or others.

(c) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use either of the following:

(1) A physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity, including techniques in which a staff member places pressure on a person's back or places his or her body weight against the person's torso or back.

(2) A pillow, blanket, or other item covering the person's face as part of a physical or mechanical restraint or containment process.

(d) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use physical or mechanical restraint or containment on a person who has a known medical or physical condition, and where there is reason to believe that the use would endanger the person's life or seriously exacerbate the person's medical condition.

(e) (1) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use prone mechanical restraint on a person at risk for positional asphyxiation as a result of one of the following risk factors that are known to the provider:

(A) Obesity.

(B) Pregnancy.

(C) Agitated delirium or excited delirium syndromes.

(D) Cocaine, methamphetamine, or alcohol intoxication.

(E) Exposure to pepper spray.

(F) Preexisting heart disease, including, but not limited to, an enlarged heart or other cardiovascular disorders.

(G) Respiratory conditions, including emphysema, bronchitis, or asthma.

(2) Paragraph (1) shall not apply when written authorization has been provided by a physician, made to accommodate a person's stated preference for the prone position or because the physician judges other clinical risks to take precedence. The written authorization may not be a standing order, and shall be evaluated on a case-by-case basis by the physician.

(f) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall avoid the deliberate use of prone containment techniques whenever possible, utilizing the best practices in early intervention techniques, such as deescalation. If prone containment techniques are used in an emergency situation, a staff member shall observe the person for any signs of physical duress throughout the use of prone containment. Whenever possible, the staff member monitoring the person shall not be involved in restraining the person.

(g) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not place a person in a facedown position with the person's hands held or restrained behind the person's back.

(h) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use physical restraint or containment as an extended procedure.

(i) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall keep under constant, face-to-face human observation a person who is in seclusion and in any type of behavioral restraint at the same time. Observation by means of video camera may be utilized only in facilities that are already permitted to use video monitoring under federal regulations specific to that facility.

(j) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall afford to persons who are restrained the least restrictive alternative and the maximum freedom of movement, while ensuring the physical safety of the person and others, and shall use the least number of restraint points.

(k) A person in a facility described in subdivision (a) of Section 1180.2 and subdivision (a) of Section 1180.3 has the right to be free from the use of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff. This right includes, but is not limited to, the right to be free from the use of a drug used in order to control behavior or to restrict the person's freedom of movement, if that drug is not a standard treatment for the person's medical or psychiatric condition.

1180.5. (a) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall conduct a clinical and quality review for each episode of the use of seclusion or behavioral restraints.

(b) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall, as quickly as possible but no later than 24 hours after the use of seclusion or behavioral restraints, conduct a debriefing regarding the incident with the person, and, if the person requests it, the person's family member, domestic partner, significant other, or authorized representative, if the desired third party can be present at the time of the debriefing at no cost to the facility, as well as with the staff members involved in the incident, if reasonably available, and a supervisor, to discuss how to avoid a similar incident in the future. The person's participation in the debriefing shall be voluntary. The purposes of the debriefing shall be to do all of the following:

(1) Assist the person to identify the precipitant of the incident, and suggest methods of more safely and constructively responding to the incident.

(2) Assist the staff to understand the precipitants to the incident, and to develop alternative methods of helping the person avoid or cope with those incidents.

(3) Help treatment team staff devise treatment interventions to address the root cause of the incident and its consequences, and to modify the treatment plan.

(4) Help assess whether the intervention was necessary and whether it was implemented in a manner consistent with staff training and facility policies.

(c) The facility shall, in the debriefing, provide both the person and staff the opportunity to discuss the circumstances resulting in the use of seclusion or behavioral restraints, and strategies to be used by the staff, the person, or others that could prevent the future use of seclusion or behavioral restraints.

(d) The facility staff shall document in the person's record that the debriefing session took place and any changes to the person's treatment plan that resulted from the debriefing.

1180.6. The State Department of Health Services, the State Department of Mental Health, the State Department of Social Services, and the State Department of Developmental Services shall annually provide information to the Legislature, during Senate and Assembly budget committee hearings, about the progress made in implementing this division. This information shall include the progress of implementation and barriers to achieving full implementation.

CHAPTER 751

An act to amend Sections 22790, 22792, 22793, 22794, 22825.1, 22840, and 22850 of the Government Code, relating to the Public Employees' Medical and Hospital Care Act, and making an appropriation therefor.

[Approved by Governor October 9, 2003. Filed with Secretary of State October 10, 2003.]

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

SECTION 1. Section 22790 of the Government Code is amended to read:

22790. (a) The board may contract with carriers for health benefits plans for employees and annuitants and major medical plans or approve health benefits plans offered by employee organizations, provided that the carriers have operated successfully in the prepaid hospital and medical care field prior to the contracting for or approval thereof. The plans may include hospital benefits, surgical benefits, in-hospital medical benefits, outpatient benefits, and obstetrical benefits, and benefits offered by a bona fide church, sect, denomination or organization whose principles include healing entirely by prayer or spiritual means. The board shall contract with a sufficient number of

carriers and plans that provide chiropractic services so that every employee and annuitant shall have a reasonable opportunity to enroll in a plan that provides chiropractic services without prior referral by a physician. The board may contract with health maintenance organizations approved under Title XIII of the federal Public Health Services Act (42 U.S.C. Sec. 201 et seq.).

(b) Notwithstanding any other provision of this part, the board may contract with health plans offering unique or specialized health services.

(c) (1) The board shall approve any employee association health benefits plan that was approved by the board in the 1987–88 contract year or any year prior to that date, provided the plan continues to meet the minimum standards prescribed by the board.

(2) The recognized employee organization for State Bargaining Unit 6 may offer different medical plan designs with varying rates in different areas of the state.

(d) The board shall provide and administer any health benefits or other coverage extended at county cost under Section 77208, upon receipt of a resolution from a county board of supervisors electing to come under the administrative provisions of this part for the coverage specified in the resolution.

(e) Notwithstanding any other provision of this part, the board may do any of the following:

(1) Contract for, or approve, health benefits plans that charge a contracting agency and its employees and annuitants rates based on regional variations in the costs of health care services.

(2) Contract for, or approve, health benefits plans exclusively for the employees and annuitants of contracting agencies. State employees and annuitants may not enroll in these plans. The board may offer health benefits plans exclusively for employees and annuitants of contracting agencies in addition to or in lieu of other health benefits plans offered under this part. The governing body of a contracting agency may elect, upon filing a resolution with the board, to provide those health benefits plans to its employees and annuitants. The resolution shall be subject to mutual agreement between the contracting agency and the recognized employee organization, if any.

SEC. 2. Section 22792 of the Government Code is amended to read:

22792. The board may, without compliance with any provisions of law relating to competitive bidding, enter into contracts with carriers offering health benefits plans or with entities offering services relating to the administration of health benefits plans. Every contract for health benefits plans shall be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. Every contract with entities providing administrative services with respect to the operation of the

board's self-funded plan shall be on those terms as the board in its discretion deems necessary or desirable.

The board may fix the beginning and ending dates of contracts with carriers of health benefits plans and with entities offering services in connection with the administration of health benefits plans in a manner it deems consistent with administration of this part. Irrespective of any agreed-upon termination date, the board may extend a contract for a reasonable period of time, subject to existing terms and conditions or any new terms and conditions which are agreed upon.

SEC. 3. Section 22793 of the Government Code is amended to read:

22793. (a) Each contract shall contain a detailed statement of benefits offered and shall include the maximums, limitations, exclusions, and other definitions of benefits as the board may deem necessary or desirable.

(b) Except as otherwise provided in this part, no contract may be made or plan approved that excludes any person on account of that person's physical condition, age, race, or other status. Except as otherwise provided in this part, transfer of enrollment in any plan shall be open to all employees and annuitants in accordance with Section 22813.

(c) No contract may be made or plan approved that does not offer to each annuitant whose enrollment in the plan is terminated other than by cancellation of enrollment, or each employee whose enrollment in the plan is terminated other than by cancellation of enrollment, voluntary separation from state service, or dismissal from state service for cause, the option to convert, without evidence of good health and within the time limits that are prescribed by the carrier and approved by the board, to a nongroup contract providing health benefits. An employee or annuitant who exercises this option shall pay the full periodic charges of the nongroup contract, on the terms or conditions that are prescribed by the carrier and approved by the board.

(d) No contract may be made or plan approved that does not provide for grievance procedures to protect the rights of employees and annuitants.

SEC. 4. Section 22794 of the Government Code is amended to read:

22794. (a) Rates charged under any health benefits plan shall reasonably reflect the cost of the benefits provided.

(b) This part does not limit the board's authority to do any of the following:

(1) Enter into contracts with carriers providing compensation based on carrier performance.

(2) Credit premiums to an employer for expenditures that the board determines are likely to improve the health status of employees and annuitants or otherwise reduce health care costs.

(3) Adjust the rates charged under any health benefits plan contract to reflect regional variations in the cost of health care services and other relevant factors. Any adjustment of these premiums shall be at the sole discretion of the board and shall only apply to the premiums charged to employees and annuitants of contracting agencies. The board may require a contracting agency and its employees and annuitants to pay the premium rate established pursuant to this paragraph, which may be different than the health benefits plan contract rate that would otherwise be applicable to that agency.

SEC. 5. Section 22825.1 of the Government Code is amended to read:

22825.1. (a) (1) Notwithstanding any other provision of this article, the employer's contribution, with respect to each state officer and employee or an annuitant who was in the employment or office including an academic position with a campus of the California State University or is a survivor of that person, shall be adjusted by the Legislature in the annual Budget Act. Annual adjustments of the dollar amounts therein shall be based upon the principle that the employer's contribution for each employee or annuitant shall be an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans which have the largest number of enrollments during the fiscal year to which the formula applied. Only the enrollment of, and premiums paid by, state employees and annuitants enrolled in basic health benefits plans shall be counted for purposes of calculating the employer contribution under this section.

(2) The employer's contribution under this section for each employee shall commence on the effective date of his or her enrollment.

(3) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 6. Section 22840 of the Government Code is amended to read:

22840. (a) There shall be maintained in the State Treasury the Public Employees' Contingency Reserve Fund. The board may invest funds in the Public Employees' Contingency Reserve Fund in

accordance with the provisions of law governing its investment of the retirement fund.

(b) (1) An account shall be maintained within the Public Employees' Contingency Reserve Fund with respect to the health benefits plans the board has approved or that have entered into a contract with the board. The account shall be credited, from time to time and in amounts as determined by the board, with moneys contributed under Section 22826 or 22831 to provide an adequate contingency reserve. The income derived from any dividends, rate adjustments, or other funds received from a health benefits plan shall be credited to the account. The board may deposit, in the same manner as provided in paragraph (3), up to one-half of one percent of premiums in the account for purposes of cost containment programs, subject to approval as provided in paragraph (2) of subdivision (c).

The account may be utilized to defray increases in future rates, to reduce the contributions of employees and annuitants and the employers, to implement cost containment programs, or to increase the benefits provided by a health benefits plan, as determined by the board. The board may use penalties and interest deposited pursuant to subdivision (c) of Section 22832 to pay any difference between the adjusted rate set by the board pursuant to Section 22794 and the applicable health benefits plan contract rates.

(2) The total credited to the account for health benefits plans at any time shall be limited, in the manner and to the extent the board may find to be most practical, to a maximum of 10 percent of the total of the contributions of the employers and employees and annuitants in any fiscal year. The board may undertake any action to ensure that the maximum amount prescribed for the fund is approximately maintained.

(3) Board rules adopted pursuant to Section 22810 to minimize the impact of adverse selection or contracts entered into pursuant to Section 22794 to implement health benefits plan performance incentives may provide for deposit in and disbursement to carriers or to Medicare from the account the portion of the contributions otherwise payable directly to the carriers by the Controller under Section 22841 or 22842 as may be required for that purpose. The deposits may not be included in applying the limitations, prescribed in paragraph (2), on total amounts that may be deposited in or credited to the fund.

(4) Notwithstanding Section 13340, all moneys in the account for health benefits plans are continuously appropriated without regard to fiscal year for the purposes provided in this subdivision.

(c) (1) An account shall also be maintained in the Public Employees' Contingency Reserve Fund for administrative expenses consisting of funds deposited for this purpose pursuant to Sections 22826 and 22831.

(2) The moneys deposited pursuant to Sections 22826 and 22831 in the Public Employees' Contingency Reserve Fund may be expended by the board for administrative purposes, provided that the expenditure is approved by the Department of Finance and the Joint Legislative Budget Committee in the manner provided in the Budget Act for obtaining authorization to expend at rates requiring a deficiency appropriation, regardless of whether the expenses were anticipated.

(d) An account shall be maintained in the Public Employees' Contingency Reserve Fund for health plan premiums paid by contracting agencies, including payments made pursuant to subdivision (e) of Section 22790. These funds are continuously appropriated, without regard to fiscal year, for the payment of premiums or other charges to carriers or the Public Employees' Health Care Fund. Penalties and interest paid pursuant to subdivision (c) of Section 22832 shall be deposited in the account pursuant to paragraph (1) of subdivision (b).

SEC. 7. Section 22850 of the Government Code is amended to read:

22850. (a) A contracting agency and its employees and annuitants shall be subject to this part upon the filing with the board of a resolution of its governing body electing to be subject. The resolution shall be adopted by a majority vote and shall be effective as is provided in board regulations.

(b) Pursuant to Section 22775 and subdivision (g) of Section 22852, the board may by regulation require any contracting agency that elects to become subject to this part to meet certain board-determined criteria, including, but not limited to, additional requirements for any contracting agency that elects to become subject to this part that previously terminated coverage pursuant to Section 22853.

CHAPTER 752

An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 10295.3 is added to the Public Contract Code, to read:

10295.3. (a) (1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars ($100,000) or

more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.

(2) For purposes of this section, ''contract'' includes contracts with a cumulative amount of one hundred thousand dollars ($100,000) or more per contractor in each fiscal year.

(3) For purposes of this section, ''domestic partner'' means one of two persons who has filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(4) (A) Subject to subparagraph (B), this section does not apply to any contracts executed or amended prior to January 1, 2007, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to January 1, 2007, unless and until those contracts or property contracts are amended after December 31, 2006, and would otherwise be subject to this section.

(B) If a duration of a contract executed or amended prior to January 1, 2007, is for more than one year going beyond January 1, 2008, this section shall apply to the contract on January 1, 2008.

(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:

(A) Within the state.

(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the state.

(C) Elsewhere in the United States where work related to a state contract is being performed.

(b) Contractors shall treat as confidential to the maximum extent allowed by law or by the requirement of the contractor's insurance provider, any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

(c) After taking all reasonable measures to find a contractor that complies with this section as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare,

or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent, with the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures; and further provided that this exemption does not apply to contractors providing direct retail services to end users.

(d) (1) If there is a difference in the cost to provide a certain benefit to a domestic partner or spouse, the contractor is not deemed to be in violation of this section so long as it permits the employee to pay any excess costs.

(2) The contractor is not deemed to discriminate in the provision of benefits if the contractor, in providing the benefits, pays the actual costs incurred in obtaining the benefit.

(3) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor may not be deemed to discriminate in the provision of benefits.

(4) For any contracts executed or amended on or after July 1, 2004, and prior to January 1, 2007, and to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, on or after July 1, 2004, and prior to January 1, 2007, unless and until those contracts or bid packages are amended after June 30, 2004, but prior to January 1, 2007, and would otherwise be subject to this section, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with this section if an employee elects to have the additional benefits. This paragraph shall not be construed to permit a contractor to require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.

(e) A contractor is not deemed to be in violation of this section if the contractor does any of the following:

(1) Offers the same benefits to employees with domestic partners and employees with spouses and offers the same benefits to domestic partners and spouses of employees.

(2) Elects to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.

(3) Elects to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including, but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.

(4) Elects not to provide benefits to employees based on their marital status or domestic partnership status, or elect not to provide benefits to employees' spouses and to employees' domestic partners.

(f) (1) Every contract subject to this chapter shall contain a statement by which the contractor certifies that the contractor is in compliance with this section.

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(3) (A) If a contractor falsely certifies that it is in compliance with this section, the contract with that contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.

(B) The application of the remedies or penalties contained in Article 9 (commencing with Section 10420) to a contract subject to this chapter shall not preclude the application of any existing remedies otherwise available to the department or other contracting agency under its existing enforcement powers.

(g) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(h) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.

SEC. 2. Section 10295.3 of the Public Contract Code shall not be construed to create new enforcement authority or responsibility in the department or any other contracting agency.

CHAPTER 753

An act to amend Sections 14528.1, 14549, 14549.1, 14549.5, 14549.6, 14552.5, 14552.51, 14560, 14561, 14573.51, 14575, 14575.1, 14581, and 14585 of, to add Sections 14513.5, 14575.2, 14575.5, and 14582 to, and to add and repeal Section 14576 of, the Public Resources Code, relating to public resources, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 14513.5 is added to the Public Resources Code, to read:

14513.5. ''HDPE'' means a plastic beverage container labeled with a "2" for high-density-polyethylene resin pursuant to Section 18015 and subject to this division.

SEC. 2. Section 14528.1 of the Public Resources Code is amended to read:

14528.1. ''Voluntary artificial scrap value'' means a price paid by a willing purchaser of empty PET containers, that reflects the payment of the scrap value for all PET containers sold, and that, when combined with payments made from the PET processing fee account pursuant to clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 14581, is equal to, or more than, the recycling cost for empty PET containers, as determined in subdivision (d) of Section 14575.

SEC. 3. Section 14549 of the Public Resources Code is amended to read:

14549. (a) Every glass container manufacturer shall report to the department each month, by a method as determined by the department, the amount of total tons of new glass food, drink, and beverage containers made in California by that glass container manufacturer and the tons of California postfilled glass used in the manufacturing of those new containers.

(b) Each glass container manufacturer in the state shall use a minimum percentage of 35 percent of postfilled glass in the manufacturing of their glass food, drink, or beverage containers measured in the aggregate, on an annual basis, except that if a glass container manufacturer demonstrates to the satisfaction of the department that its use of postfilled glass during the annual period is made up of at least 50 percent mixed-color cullet, then that manufacturer shall use a minimum percentage of 25 percent postfilled glass in the manufacturing of its glass food, drink, or beverage containers, measured in the aggregate, on an annual basis.

(c) A glass container manufacturer may seek a reduction or waiver of the minimum postfilled glass percentage required to be used in the manufacture of glass food, drink, or beverage containers pursuant to subdivision (b). The department may grant a reduction or waiver of the percentage requirement if it finds and determines that it is technologically infeasible for the glass container manufacturer to achieve the percentage requirement or if the department determines that a glass container manufacturer cannot achieve the minimum percentage because of a lack of available glass cullet.

(d) For the purposes of this section, ''mixed-color cullet'' means cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for color mix of color sorted postfilled glass as raw material for the manufacture of glass containers.

SEC. 4. Section 14549.1 of the Public Resources Code is amended to read:

14549.1. In order to improve the quality and marketability of glass containers collected for recycling in the state by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to either an operator of a curbside recycling program registered pursuant to Section 14551.5, or to any other entity certified pursuant to this division, that color sorts glass beverage containers for recycling. The total amount paid by the department pursuant to this section shall not exceed three million dollars ($3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(a) The amount of the quality glass incentive payment shall be up to thirty dollars ($30) per ton, as determined by the department.

(b) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(c) The department shall make a quality glass incentive payment only for glass beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or any other entity certified pursuant to this division.

(d) Only one payment shall be made for each color-sorted glass beverage container collected.

SEC. 5. Section 14549.5 of the Public Resources Code is amended to read:

14549.5. On or before the 90th day after the effective date of the act amending this section, and annually thereafter, or more frequently as determined to be necessary by the department, the department shall review and, if necessary in order to ensure payment of the most accurate

commingled rate feasible, recalculate commingled rates paid for beverage containers and postfilled containers paid to curbside recycling programs, collection programs, and recycling centers. Prior to recalculating a commingled rate pursuant to this section, the department shall do all of the following:

(a) Consult with private and public operators of curbside recycling programs, collection programs, and recycling centers concerning the size of the statewide sample, appropriate sampling methodologies, and alternatives to exclusive reliance on a statewide commingled rate.

(b) At least 60 days prior to the effective date of any new commingled rate, hold a public hearing, after giving notice, to make available to the public and affected parties the department's review and any proposed recalculations of the commingled rate.

(c) At least 60 days prior to the effective date of any new commingled rate, and upon the request of any party, make available documentation or studies which were prepared as part of the department's review of a commingled rate.

(d) (1) Notwithstanding this division, the department may calculate a curbside recycling program commingled rate pursuant to this subdivision for bimetal containers and a combined commingled rate for all plastic beverage containers displaying the resin identification code "3," "4," "5," "6," or "7" pursuant to Section 18015.

(2) The department may enter into a contract for the services required to implement the amendments to this section made by the act of the first half of the 2003–04 Regular Session of the Legislature amending this section. The department may not expend more than two hundred fifty thousand dollars ($250,000) for each year of the contract. The contract shall be paid only from revenues derived from redemption payments and processing fees paid on plastic beverage containers displaying the resin identification code "3," "4," "5," "6," or "7" pursuant to Section 18015. If the department determines that insufficient funds will be available from these revenues, after refund values are paid to processors and the reduction is made in the processing fee pursuant to subdivision (f) of Section 14575 for these containers, the department may determine not to calculate a commingled rate pursuant to this subdivision.

SEC. 6. Section 14549.6 of the Public Resources Code is amended to read:

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars ($15,000,000) per fiscal year to operators of curbside programs and neighborhood dropoff programs that accept all types of empty beverage containers for recycling. The payments shall be for each container collected by the curbside or neighborhood dropoff programs

and properly reported to the department by processors, based upon all of the following:

(1) The payment amount shall be calculated based upon the volume of beverage containers collected by curbside and neighborhood dropoff programs during the 12-month calendar year ending on December 31 of the fiscal year for which payments are to be made.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars ($15,000,000).

(3) The amount to be paid to each operator of a curbside and neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the curbside program's total reported beverage container volume calculated pursuant to paragraph (1).

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not later than the end of the fiscal year following the calendar year for which the payments are calculated pursuant to paragraph (1) of subdivision (a), subject to the availability of funds.

(d) The operator of a curbside program or neighborhood dropoff program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

SEC. 7. Section 14552.5 of the Public Resources Code is amended to read:

14552.5. (a) The department shall supply all certified processors with a standardized rejection form that shall include, but not be limited to, the name of the parties rejecting the postfilled beverage container material, the date of the rejections, the reasons for the rejections, the amount of rejected material, and a detailed accounting of the steps taken by the processor and container manufacturer to avert landfilling or disposal of the material, as required by subdivision (c) of Section 14552.51.

(b) Every container manufacturer shall fill out the standardized rejection form specified in subdivision (a) whenever that container manufacturer rejects a load of redeemed beverage container materials physically delivered to the manufacturer's place of business and offered for sale by a certified processor. The rejection form shall be filled out by the container manufacturer at the time of the rejection and immediately given to the certified processor for submittal to the department. Any container manufacturer who refuses to fill out the standardized rejection

form required by this subdivision is in violation of this division and is subject to the fines and penalties in Sections 14591 and 14591.1.

(c) If a processor has made a good faith effort, as determined by the department, to locate a willing purchaser and is unsuccessful, the processor may fill out the standardized rejection form specified in subdivision (a) and submit it to the department. The processor rejection form shall include, but is not limited to, the name of the processor, the container manufacturers and other potential purchasers contacted, a detailed accounting of the methods used to contact the potential buyers, the date of the rejections, the reasons given for the rejections, the amount of postfilled beverage container material rejected, and any other steps taken to avert landfilling or disposal of the material.

(d) If a container manufacturer rejects a load of postfilled containers by telephone, written correspondence of any kind, or other similar method, the container manufacturer shall, in a manner prescribed by the department, keep accurate logbooks of the offer of loads by the certified processor, and make that logbook available for inspection by the department upon demand. The logbook shall contain, but is not limited to, the same information required in the rejection form pursuant to subdivision (a).

(e) The standardized rejection form specified in subdivision (a) shall be submitted to the department by the certified processor with the written request to dispose of the redeemed material submitted pursuant to Section 14552.51. This material shall not be disposed of without a written authorization to do so by the department pursuant to Section 14552.51.

(f) Nothing in this section shall be interpreted to lessen certified processors' and container manufacturer's responsibilities relating to beverage container recycling, or diminish in any way the department's authority to carry out the intent and goals of this division.

SEC. 8. Section 14552.51 of the Public Resources Code is amended to read:

14552.51. (a) A certified processor seeking to dispose of rejected postfilled containers may not dispose of rejected postfilled containers unless the certified processor first submits to the department, in writing, a request to dispose of the rejected material. No certified processor shall dispose of the rejected material prior to obtaining written permission from the department. If the department fails to respond to a written request to dispose of rejected postfilled beverage container materials within 10 days of receipt of the request, the processor's request for disposal is deemed approved by the department.

(b) All rejected loads of postfilled containers shall be available and subject to inspection by the department.

(c) All possible steps to avert the disposal of the loads of postfilled containers, as determined by the department, shall be taken by all container manufacturers and processors. All transactions or attempted transactions involving rejecting postfilled containers shall be thoroughly documented on the standardized rejection form pursuant to Section 14552.5. The container manufacturer and the certified processor are jointly and severally responsible for this effort.

SEC. 9. Section 14560 of the Public Resources Code is amended to read:

14560. (a) (1) Except as provided in paragraph (3), a beverage distributor shall pay the department, for deposit into the fund, a redemption payment of four cents ($0.04) for a beverage container sold or offered for sale in this state by the distributor.

(2) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of redemption payments and refund values.

(3) On and after July 1, 2007, the amount of the redemption payment and refund value for a beverage container with a capacity of less than 24 fluid ounces sold or offered for sale in this state by a dealer shall equal five cents ($0.05) and the amount of redemption payment and refund value for a beverage container with a capacity of 24 fluid ounces or more shall be ten cents ($0.10), if the aggregate recycling rate reported pursuant to Section 14551 for all beverage containers subject to this division is less than 75 percent for the 12-month reporting period from January 1, 2006, to December 31, 2006, or for any calendar year thereafter.

(b) Except as provided in subdivision (c), all beverage containers sold or offered for sale in this state have a minimum refund value of eight cents ($0.08) for every two beverage containers redeemed and four cents ($0.04) for a single or unpaired beverage container redeemed in a single transaction.

(c) Notwithstanding subdivision (b), a single or unpaired beverage container of 24 fluid ounces or larger shall have a minimum refund value of eight cents ($0.08).

(d) (1) The department shall periodically review the fund to ensure that there are adequate funds in the fund to pay refund values and other disbursements required by this division.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the refund values and necessary disbursements required by this division, the department shall immediately notify the Legislature of the need for urgent legislative action.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from

the fund as necessary, according to the procedure set forth in Section 14581, to ensure that there are adequate funds in the fund to pay the refund values and other disbursements required by this division.

(e) This section does not apply to a refillable beverage container.

(f) The repeal and reenactment of this section by Chapter 815 of the Statutes of 1999 does not affect any obligations or penalties imposed by this section, as it read on January 1, 1999.

SEC. 10. Section 14561 of the Public Resources Code is amended to read:

14561. (a) A beverage manufacturer shall clearly indicate on all beverage containers sold or offered for sale by that beverage manufacturer in this state the message ''CA Redemption Value,'' ''California Redemption Value,'' ''CA Cash Refund,'' ''California Cash Refund,'' or ''CA CRV,'' by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(b) Any refillable beverage container sold or offered for sale is exempt from this section. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message that the manufacturer determines to be appropriate relating to the refund value of the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) that has not been labeled pursuant to this section, except for a refillable beverage container that is exempt from labeling pursuant to subdivision (b).

(d) The department may require that a beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(e) A beverage container labeled with the message specified in subdivision (a) shall have the minimum redemption payment established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

(f) Until July 1, 2004, a beverage manufacturer may continue to sell or offer for sale beverage containers bearing any redemption value message permitted by this division as of January 1, 2003.

SEC. 11. Section 14573.51 of the Public Resources Code is amended to read:

14573.51. (a) Notwithstanding any other provision of this division, recycling centers and processors shall not pay curbside programs more than the applicable statewide average curbside commingled rate unless the curbside program has received an individual commingled rate from the department pursuant to subdivision (b).

(b) The department may establish a procedure whereby the operators of curbside programs may apply for an individual commingled rate for any material or types with or without a statewide commingled rate, including, but not limited to, glass, aluminum, bimetal, or any of the individual plastic resin types or combination of resin types identified by resin identification codes under Section 18015. These procedures shall require, at a minimum, all of the following:

(1) The individual rate shall be valid for no more than one year from the date the individual rate is authorized.

(2) The methodology used by the operator of the curbside program to determine the commingled rate shall be approved by the department, in advance.

(c) Curbside programs that have acquired an individual commingled rate, pursuant to this section, shall not be surveyed by the department to determine the statewide average curbside commingled rate during the period the individual commingled rate is effective.

(d) The department may enter into a contract for the services required to implement the amendments to this section made by the act of the first half of the 2003–04 Regular Session of the Legislature amending this section. The department may not expend more than two hundred fifty thousand dollars ($250,000) for each year of the contract. The contract shall be paid only from revenues derived from redemption payments and processing fees paid on plastic beverage containers displaying the resin identification code ''3,'' ''4,'' ''5,'' ''6,'' or ''7'' pursuant to Section 18015. If the department determines that insufficient funds will be available from these revenues, after refund values are paid to processors and the reduction is made in the processing fee pursuant to subdivision (f) of Section 14575 for these containers, the department may determine not to calculate a commingled rate pursuant to subdivision (b).

SEC. 12. Section 14575 of the Public Resources Code is amended to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall, on January 1, 2000, and on or before January 1 annually thereafter, establish a processing fee and a processing payment for the container by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only

if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling costs for purposes of paragraphs (2) and (3) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) The department shall use the average scrap values paid to recyclers between October 1, 2001, and September 30, 2002, for the 2003 calculation and the same 12-month period directly preceding the year in which the processing fee is calculated for any subsequent calculation.

(2) To calculate the 2003 processing payments, the department shall use the recycling costs for certified recycling centers used to calculate the January 1, 2002, processing payments.

(3) For calculating processing payments that will be in effect on and after January 1, 2004, the department shall determine the actual costs for certified recycling centers, every second year, pursuant to paragraph (1) of subdivision (b). The department shall adjust the recycling costs annually to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

(d) Notwithstanding paragraph (1) of subdivision (b) and subdivision (c), for the purpose of setting the cost for recycling non-PET plastic containers by certified recycling centers to determine the processing payment for those containers, the department shall use a recycling cost of six hundred forty-two dollars and sixty-nine cents ($642.69) per ton for the January 1, 2002, calculation of the processing payment.

(e) Except as specified in subdivision (f), the actual processing fee paid by a beverage manufacturer shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

(f) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers by expending funds in each material processing fee account, in the following manner:

(1) The processing fee in effect on January 1, 2004, shall be equal the following amounts:

(A) For a container type that was subject to this division on January 1, 1999, 12 percent of the processing payment if the recycling rate of that

container type was equal to, or greater than, 60 percent for the 1999 calendar year.

(B) For a container type that was not subject to this division on January 1, 1999, 12 percent of the processing payment, if the recycling rate of that container type was equal to, or greater than, 60 percent for the 2001 calendar year.

(C) For a container type that was not subject to this division on January 1, 1999, 15 percent of the processing payment if the recycling rate for that container type was equal to, or greater than, 45 percent, but less than 60 percent for the 2001 calendar year.

(D) For a container type that was not subject to this division on January 1, 1999, 20 percent of the processing payment if the recycling rate for that container type was equal to, or greater than, 30 percent, but less than 45 percent, for the 2001 calendar year.

(2) On January 1, 2005, and annually thereafter, the processing fee shall equal the following amounts:

(A) Ten percent of the processing payment for a container type with a recycling rate equal to or greater than 75 percent.

(B) Eleven percent of the processing payment for a container type with a recycling rate equal to or greater than 65 percent, but less than 75 percent.

(C) Twelve percent of the processing payment for a container type with a recycling rate equal to or greater than 60 percent, but less than 65 percent.

(D) Thirteen percent of the processing payment for a container type with a recycling rate equal to or greater than 55 percent, but less than 60 percent.

(E) Fourteen percent of the processing payment for a container type with a recycling rate equal to or greater than 50 percent, but less than 55 percent.

(F) Fifteen percent of the processing payment for a container type with a recycling rate equal to or greater than 45 percent, but less than 50 percent.

(G) Eighteen percent of the processing payment for a container type with a recycling rate equal to or greater than 40 percent, but less than 45 percent.

(H) Twenty percent of the processing payment for a container type with a recycling rate equal to or greater than 30 percent, but less than 40 percent.

(I) Sixty-five percent of the processing payment for a container type with a recycling rate less than 30 percent.

(3) The department shall calculate the recycling rate for purposes of paragraph (2) based on the 12-month period ending on June 30 that directly precedes the date of the January 1 processing fee determination.

(g) Not more than once every three months, the department may make an adjustment in the amount of the processing payment established pursuant to this section notwithstanding any change in the amount of the processing fee established pursuant to this section, for any beverage container, if the department makes the following determinations:

(1) The statewide scrap value paid by processors for the material type for the most recent available 12-month period directly preceding the quarter in which the processing payment is to be adjusted is 5 percent more or 5 percent less than the average scrap value used as the basis for the processing payment currently in effect.

(2) Funds are available in the processing fee account for the material type.

(3) Adjusting the processing payment is necessary to further the objectives of this division.

(h) (1) Except as provided in paragraphs (2) and (3), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) (A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering for sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) (A) Notwithstanding paragraph (1), a beverage manufacturer may, upon the approval of the department, elect to make a single annual payment of processing fees, if the beverage manufacturer's projected

processing fees for a calendar year total less than one thousand dollars ($1,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year preceding the year in which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (b).

(i) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in subdivisions (e) and (f), by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled.

(j) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

(k) If, at the end of any calendar year for which glass recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the glass processing fee account to make the reduction pursuant to this subdivision or if, at the end of any calendar year for which PET recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the PET processing fee account to make the reduction pursuant to this subdivision, the department shall use these surplus funds in the respective processing fee accounts in the following calendar year to reduce the amount of the processing fee that would otherwise be due from glass or PET beverage manufacturers pursuant to this subdivision.

(1) The department shall reduce the glass or PET processing fee amount pursuant to this subdivision in addition to any reduction for which the glass or PET beverage container qualifies under subdivision (f).

(2) The department shall determine the processing fee reduction by dividing two million dollars ($2,000,000) from each processing fee account by an estimate of the number of containers sold or transferred to a distributor during the previous calendar year, based upon the latest available data.

SEC. 13. Section 14575.1 of the Public Resources Code is amended to read:

14575.1. (a) Notwithstanding subdivision (b) of Section 14575, if a willing purchaser offers to purchase empty PET containers at a voluntary artificial scrap value that is equal to the processing fee reduced pursuant to subdivision (f) of Section 14575 when applied to all containers sold, no processing fee shall be imposed on PET containers pursuant to Section 14575.

(b) If a willing purchaser offers to pay a voluntary artificial scrap value, the department shall, on a monthly basis, determine whether the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, are equal to, or more than, the recycling cost for empty PET containers determined pursuant to subdivision (d) of Section 14575.

(c) If the department determines that, for any monthly period, the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, is less than the recycling cost for empty PET containers, determined pursuant to Section 14575, the following requirements shall apply:

(1) The department shall immediately provide written notification of the deficiency for that monthly period and the amount of that deficiency to any willing purchaser.

(2) A willing purchaser shall correct the deficiency in the next monthly period by adjusting the voluntary artificial scrap value by an amount sufficient to equal the recycling cost for empty PET containers plus the previous monthly period's deficiency.

(3) If the deficiency and amount in arrears is not corrected within 30 days of providing written notice to willing purchasers of empty PET containers, the department shall impose a processing fee pursuant to Section 14575 which includes any amount necessary, including any amount in arrears, to cover the cost of recycling empty PET containers.

(d) If the department determines that, for any monthly period, the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, is greater than the recycling cost for empty PET containers, the department shall do both of the following:

(1) Immediately provide written notification of the deviation for that monthly period and the amount of that deviation to any willing purchaser.

(2) Provide a credit equal to the amount of the deviation for any future monthly period wherein the voluntary artificial scrap value, and payments made from the PET Processing Fee Account, are less than the recycling cost of empty PET containers determined pursuant to subdivision (d) of Section 14575.

(e) Nothing in this section is intended to affect any litigation that was pending on January 1, 1996, in which the department is a party of record.

SEC. 14. Section 14575.2 is added to the Public Resources Code, to read:

14575.2. (a) In order to ensure that only those funds necessary to cover the net cost of recycling each beverage container sold are paid by beverage manufacturers, the department shall establish a processing fee rebate for all beverage containers for which a processing fee was paid on containers sold between January 1, 2002, and December 31, 2003. The amount of the rebate for each container shall be equal to the difference between the processing fee established and paid pursuant to Section 14575 as it read on January 1, 2003, and the processing fee established pursuant to paragraph (1) of subdivision (f) of Section 14575 as it reads on the effective date of the act adding this section.

(b) Consistent with Section 14581, and subject to the availability of funds, the department shall pay a processing fee rebate to beverage manufacturers on all beverage containers sold between January 1, 2002, and December 31, 2003, for which the beverage manufacturer paid a processing fee as determined by the department.

(c) The department shall pay the processing fee rebate in a form and manner as it determines.

(d) The department may not pay the processing fee rebate before July 1, 2004, or after June 30, 2006.

(e) The department may deduct from the processing fee rebate any amount owed to the department by the beverage manufacturer.

(f) It is the intent of the Legislature that the department undertake those actions that are in compliance with this chapter and that reduce processing fees paid by beverage manufacturers consistent with this section prior to the effective date of the act adding this subdivision.

SEC. 15. Section 14575.5 is added to the Public Resources Code, to read:

14575.5. (a) The department shall establish a supplemental processing payment to be paid to a processor. The processor shall pay the entire supplemental processing payment to a recycler that receives processing payments pursuant to Section 14575. The department shall determine the supplemental processing payment based on the volume of redeemed containers that the recycler reports for each whole month pursuant to subdivision (b), commencing on July 1, 2004, and continuing for a period of 12 consecutive months.

(1) Consistent with Section 14581 and subject to the availability of funds, the department shall establish a supplemental processing payment for glass, PET plastic containers, and HDPE plastic containers as follows:

(A) Forty dollars and eighty-six cents ($40.86) for each ton of glass beverage containers.

(B) One hundred eighty-two dollars and fifty-four cents ($182.54) for each ton of PET plastic beverage containers.

(C) Two hundred twenty-eight dollars and seventy-five cents ($228.75) for each ton of HDPE plastic beverage containers.

(2) The department may not make a supplemental processing payment to a recycler for any volume reported for a whole month that is not within the 12-month consecutive time period established in subdivision (a).

(b) A recycler shall report to a processor the volume of redeemed containers subject to the supplemental processing payments established pursuant to paragraph (1) of subdivision (a) no later than the 10th day following the end of the 12-month period established in subdivision (a).

(c) The department shall pay the supplemental processing payments on eligible redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5, except that paragraph (2) of subdivision (a) of Section 14573.5 is not applicable. The processor shall pay a recycler the entire supplemental processing payment as specified in subdivision (a).

SEC. 16. Section 14576 is added to the Public Resources Code, to read:

14576. (a) From January 1, 2004, to December 31, 2006, inclusive, the department shall establish a pilot program using supermarket sites that use both reverse vending machines and staffed recycling centers to determine whether or not these recycling centers increase recycling rates and provide greater convenience and ease of use for consumers.

(b) The pilot program shall comply with all of the following criteria:

(1) The program shall consist of not more than 50 supermarket sites that represent a valid statistical sampling of the state, as determined by the department.

(2) Each dealer where the supermarket site is located certifies to the department in writing that it has authorized the recycling center to participate in the pilot program.

(3) Each supermarket site in the pilot program has at least two reverse vending machines that accept all types of beverage containers, except those beverage containers that are labeled with a ''2,'' as specified in subdivision (a) of Section 18015 and are larger than three liters.

(4) The department authorizes each supermarket site, which has redeemed, as determined by the department, a monthly average volume of no less than 60,000 empty beverage containers, and no more than 150,000 empty beverage containers for the months between July 1, 2002, and June 30, 2003, inclusive.

(c) Each supermarket site participating in the pilot program shall comply with all of the following requirements:

(1) The supermarket site is inspected by the operator that participates in the pilot program at least once each day to maintain and empty the machines and ensure that the site is kept clean.

(2) The operator of the supermarket site submits monthly service records to the department within 10 days of the end of each month, showing the number of complaints per site, if any, and the response time for each service call.

(3) (A) The supermarket site is operational at least 95 percent of operable time.

(B) For purposes of this paragraph, ''operable time'' means the actual operating hours the supermarket site is required to be open for business each month. A supermarket site's operating hours shall be determined consistent with the supermarket's operational hours, subject to applicable curfew requirements imposed by local ordinance.

(4) The reverse vending machine at the supermarket site is not inoperative more than one day a month, and if that breakdown rate is exceeded, the supermarket site replaces the reverse vending machine within three business days.

(5) The operator of the supermarket site repairs a reverse vending machine within five business hours of receiving a complaint by a consumer, the dealer, or the department that the recycling center is not operational during operable time.

(6) The supermarket site provides a receptacle adjacent to the reverse vending machine for beverage containers that are labeled with a ''2,'' as specified in subdivision (a) of Section 18015, and that are larger than three liters. The operator shall post a sign on the receptacle indicating the hours of staffed operation in which a consumer may return the container to the site and receive a redemption payment.

(7) The operator of the supermarket site has an attendant present at the supermarket site a minimum of 20 hours per week, including no fewer than three hours on a Saturday or a Sunday between the hours of 9 a.m. and 5 p.m. and no fewer than three evening hours between the hours of 5 p.m. and 9 p.m. during one weekday evening.

(8) The operator of the supermarket site provides instructions for use of the reverse vending machine at the supermarket site in appropriate languages and in pictorial representations demonstrating how to use the reverse vending machine.

(9) The operator of the supermarket site maintains a toll-free telephone number attended by a live operator during operable time to answer calls from any person regarding the performance of its reverse vending machine.

(10) The operator of the supermarket site posts information identifying the location of, and directions to, the nearest certified recycling center that is open for business at least 30 hours per week and accepts all material types.

(d) If the department determines that the total volume of beverage containers redeemed at a supermarket site authorized to participate in the pilot program decreases by more than 10 percent from the volume reported for the prior year, the supermarket site shall be staffed for at least 30 hours per week.

(e) (1) The department shall monitor the volume of beverage containers redeemed at each supermarket site participating in the pilot program at least once every three-month period.

(2) The department shall conduct an annual review of each supermarket site participating in the pilot program to determine overall performance and make operational adjustments.

(3) The department shall disqualify an individual site from participation in the pilot program, effective within seven calendar days of notice provided to the operator, upon a determination that the continued operation of the supermarket site within the pilot program does not further the goals of the division.

(4) The department shall, upon the written request of the dealer at the supermarket site and within seven calendar days of the request made by the dealer to the department, disqualify the operator from further participation in the pilot program at that supermarket site.

(f) The department may adopt emergency regulations to implement this section. Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(g) Notwithstanding Sections 14570 and 14571, a supermarket site that consists of reverse vending machines is ''open for business'' within the meaning of this section if the supermarket site is approved by the department to participate in the pilot program pursuant to paragraph (4) of subdivision (b) and the supermarket site complies with the operating requirements specified in subdivision (c).

(h) On or before July 1, 2006, the department shall report to the Governor and Legislature on the effectiveness of the pilot program and make recommendations on whether the program should be continued, expanded, or modified to ensure compliance with this division.

(i) 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. 17. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the money set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section:

(1) On and after July 1, 2002, twenty-six million five hundred thousand dollars ($26,500,000) shall be expended annually for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars ($15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars ($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education

promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) (A) One million five hundred thousand dollars ($1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Up to a total of six million eight hundred forty thousand dollars ($6,840,000) shall be paid to the City of San Diego, between January 1, 2000, and January 1, 2004, for a curbside recycling program conducted pursuant to Section 14549.7.

(6) (A) The department shall expend the amount necessary to pay the processing payment and supplemental processing payment established pursuant to Sections 14575 and 14575.5 and pay processing fee rebates pursuant to Section 14575.2. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited all of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in subparagraph (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments and supplemental processing payments, and reducing processing fees, pursuant to Sections 14575 and 14575.5 and paying processing fee rebates pursuant to Section 14575.2.

(7) Up to five million dollars ($5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(8) Up to three million dollars ($3,000,000) shall be expended annually for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9) (A) Three hundred thousand dollars ($300,000) shall be expended annually by the department, until January 1, 2005, pursuant to a cooperative agreement entered into between the department and Keep California Beautiful, a nonprofit 501(c)(3) organization chartered by the State of California in 1990, for the purpose of conducting statewide public education campaigns aimed at preventing and cleaning up beverage containers and related litter. The campaigns shall include, but not be limited to, coordination of Keep California Beautiful month.

(B) Prior to making an expenditure pursuant to this paragraph, the department shall enter into a cooperative agreement with Keep California Beautiful.

(C) As part of the cooperative agreement, Keep California Beautiful shall provide the department with an annual campaign plan and budget, and a report of previous year campaign activities.

(10) Up to ten million dollars ($10,000,000) may be expended annually by the department, until January 1, 2007, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification codes "3," "4," "5," "6," or "7," pursuant to Section 18015.

(11) Up to ten million dollars ($10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

SEC. 18. Section 14582 is added to the Public Resources Code, to read:

14582. The Recycling Infrastructure Loan Guarantee Account is hereby created as a revolving account in the California Beverage Container Recycling Fund, and the funds in that account are continuously appropriated to the department to issue loan guarantees for capital expenditures for new recycling infrastructure located in the state. The department may issue a loan guarantee from the account only if the department determines that the new recycling infrastructure adds recycling capacity, results in remanufacturing and reuse of beverage containers into new products, and complies with all applicable laws and regulations.

SEC. 19. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall adopt guidelines and methods for paying handling fees to supermarket sites, nonprofit convenience zone recyclers, or rural region recyclers to provide an incentive for the redemption of empty beverage containers in convenience zones. The guidelines shall include, but not be limited to, all of the following:

(1) Handling fees shall be paid on a monthly basis, in the form and manner adopted by the department. The department shall require that claims for the handling fee be filed with the department not later than the first day of the second month following the month for which the handling fee is claimed as a condition of receiving any handling fee.

(2) To be eligible for any handling fee, a supermarket site recycling center, nonprofit convenience zone recycler, or rural region recycler shall redeem not less than 60,000 beverage containers, during the calendar month in which the handling fee is claimed or have redeemed not less than an average of 60,000 beverage containers per month during the previous 12 months.

(3) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of determining the eligibility percentage, any handling fee calculations, and payments.

(4) The department shall determine the number of eligible containers per site for which a handling fee will be paid in the following manner:

(A) Each eligible site's combined monthly volume of glass and plastic beverage containers shall be divided by the site's total monthly volume of all empty beverage container types.

(B) If the quotient determined pursuant to subparagraph (A) is equal to, or more than, 10 percent, the total monthly volume of the site shall be the maximum volume which is eligible for a handling fee for that month.

(C) If the quotient determined pursuant to subparagraph (A) is less than 10 percent, the department shall divide the volume of glass and

plastic beverage containers by 10 percent. That quotient shall be the maximum volume that is eligible for a handling fee for that month.

(5) The department shall pay a handling fee of 1.8 cents ($0.018) per eligible beverage container, as determined pursuant to paragraph (4).

(6) Notwithstanding paragraph (5), the total handling fee payment to a supermarket site, nonprofit convenience zone recycler, or rural region recycler shall not exceed two thousand three hundred dollars ($2,300) per month.

(7) If the eligible volume in any given month would result in handling fee payments which exceed the allocation of funds for that month, as provided in subdivision (b), sites with higher eligible monthly volumes shall receive handling fees for their entire eligible monthly volume before sites with lower eligible monthly volumes receive any handling fees.

(8) (A) If a dealer where a supermarket site, nonprofit convenience zone recycler, or rural region recycler is located ceases operation for remodeling or for a change of ownership, the operator of that supermarket site nonprofit convenience zone recycler, or rural region recycler shall be eligible to apply for handling fees for that site for a period of three months following the date of the closure of the dealer.

(B) Every supermarket site operator, nonprofit convenience zone recycler, or rural region recycler shall promptly notify the department of the closure of the dealer where the supermarket site, nonprofit convenience zone recycler, or rural region recycler is located.

(C) Notwithstanding subparagraph (A), any operator who fails to provide notification to the department pursuant to subparagraph (B) shall not be eligible to apply for handling fees.

(b) The department may allocate the amount authorized for expenditure for the payment of handling fees pursuant to paragraph (1) of subdivision (a) of Section 14581 on a monthly basis and may carry over any unexpended monthly allocation to a subsequent month or months. However, unexpended monthly allocations shall not be carried over to a subsequent fiscal year for the purpose of paying handling fees but may be carried over for any other purpose pursuant to Section 14581.

(c) (1) The department shall not make handling fee payments to more than one certified recycling center in a convenience zone. If a dealer is located in more than one convenience zone, the department shall offer a single handling fee payment to a supermarket site located at that dealer. This handling fee payment shall not be split between the affected zones. The department shall stop making handling fee payments if another recycling center certifies to operate within the convenience zone without receiving payments pursuant to this section, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with

this division. Any recycling center that locates in a convenience zone, thereby causing a preexisting recycling center to become ineligible to receive handling fee payments, is ineligible to receive any handling fee payments in that convenience zone.

(2) The department shall offer a single handling fee payment to a rural region recycler that is located anywhere inside a convenience zone that is not served by another certified recycling center and does either of the following:

(A) Operates a minimum of 30 hours per week in one convenience zone.

(B) Serves two or more convenience zones, and meets all of the following criteria:

(i) Is the only certified recycler within each convenience zone.

(ii) Is open and operating at least eight hours per week in each convenience zone and is certified at each location.

(iii) Operates at least 30 hours per week in total for all convenience zones served.

(d) The department may require the operator of a supermarket site or rural region recycler receiving handling fees to maintain records for each location where beverage containers are redeemed, and may require the supermarket site or rural region recycler to take any other action necessary for the department to determine that the supermarket site or rural region recycler does not receive an excessive handling fee.

(e) The department may determine and utilize a standard container per pound rate, for each material type, for the purpose of calculating volumes and making handling fee payments.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 754

An act to amend Section 12076 of, and to repeal Section 12071 of, the Penal Code, and to amend Section 3 of Chapter 909 of the Statutes of 2002, and Section 4 of Chapter 911 of the Statutes of 2002, relating to firearms, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 12071 of the Penal Code, as amended by Section 1 of Chapter 911 of the Statutes of 2002, is repealed.

SEC. 2. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee

designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the

electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is necessary to fund the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(10) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 3. Section 9 of Chapter 909 of the Statutes of 2002 is amended to read:

Sec. 9. Notwithstanding subdivision (c) of Section 12083, Section 12083 of the Penal Code shall become operative on January 1, 2004.

SEC. 4. Section 4 of Chapter 911 of the Statutes of 2002 is amended to read:

Sec. 4. Section 1.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2080. 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 12071 of the Penal Code, and (3) this bill is enacted after AB 2080, in which case Section 12071 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until January 1, 2004, at which time Section 1.5 of this bill shall become operative.

SEC. 5. The sum of five hundred forty-eight thousand dollars ($548,000) is hereby appropriated from the Dealers' Record of Sale Special Account to the Department of Justice for purposes of implementing Section 12083 of the Penal Code, as added by Chapter 909 of the Statutes of 2002.

CHAPTER 755

An act to amend Section 33143 of, and to add and repeal Section 52086.5 of, the Education Code, relating to public education.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 33143 of the Education Code is amended to read:

33143. (a) In addition to the positions authorized by Section 2.1 of Article IX of the California Constitution, the Governor, with the recommendation of the Superintendent of Public Instruction, shall appoint five deputy superintendents of public instruction and five

associate superintendents of public instruction who shall be exempt from state civil service.

(b) Appointments to these exempt positions shall not result in any net increase in the expenditures of the State Department of Education.

SEC. 2. Section 52086.5 is added to the Education Code, to read:

52086.5. (a) Notwithstanding any other provision of law, as an alternative to a class size reduction program that reduces class size in grade 9 to an average of 20 pupils in two classes as set forth in this article, the Tamalpais Union High School District may, on a pilot project basis, implement a class size reduction program to reduce class size in grade 9 to a maximum of 25 pupils per certificated teacher in each of the four core subject areas of English, mathematics, science, and social sciences, subject to an agreement with the exclusive representative for collective bargaining of the certificated employees.

(b) All of the provisions of this article apply to the alternative program, except that English, mathematics, science, and social science classes shall be reduced in grade 9 to a maximum of 25 pupils rather than an average of 20 pupils. The increase to a maximum of 25 pupils per certificated teacher in each of the four subject areas in grade 9 may not result in funding exceeding two times the grade 9 enrollment of the participating school.

(c) A school participating in the pilot project shall have attained a score of over 800 on the Academic Performance Index (API) in the 2000–01 testing year.

(d) The school district shall provide an annual evaluation report to the State Board of Education on the effects on pupil achievement of incorporating the four core subject areas into a smaller learning community with a maximum class size of 25 pupils per certificated teacher.

(e) This section is inoperative on and after 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. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Tamalpais Union High School District. The facts constituting the special circumstances are the district's smaller learning communities and their unique staffing and pupil distribution needs.

SEC. 4. Notwithstanding any other provision of law, for purposes of calculating instructional days and minutes in the 2001–02 fiscal year for schools operating on a single track year-round calendar, the Fairfield-Suisun Unified School District's 2001–02 school year is

deemed to have commenced on September 4, 2001, and to have concluded on July 24, 2002.

SEC. 5. The Legislature finds and declares that due to the unique circumstances surrounding the Fairfield-Suisun Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 756

An act to amend Section 337j of the Penal Code, relating to gaming.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 337j of the Penal Code is amended to read:

337j. (a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game.

(2) To receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game.

(3) To manufacture, distribute, or repair any gambling equipment within the boundaries of this state, or to receive, directly or indirectly, any compensation or reward for the manufacture, distribution, or repair of any gambling equipment within the boundaries of this state.

(b) It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(c) It is unlawful for any person to knowingly permit any gambling equipment to be manufactured, stored, or repaired in any house or building or other premises that the person owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(d) Any person who violates, attempts to violate, or conspires to violate this section shall be punished by imprisonment in a county jail

for not more than one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(e) (1) As used in this section, ''controlled game'' means any poker or Pai Gow game, and any other other game played with cards or tiles, or both, and approved by the Division of Gambling Control, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.

(2) As used in this section, ''controlled game'' does not include any of the following:

(A) The game of bingo conducted pursuant to Section 326.5.

(B) Parimutuel racing on horse races regulated by the California Horse Racing Board.

(C) Any lottery game conducted by the California State Lottery.

(D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.

(f) This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public. The actual collection of the fee may occur before or after the start of play. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than three collection rates may be established per table. However, if the gambling establishment waives its collection fee, this fee does not constitute one of the three collection rates.

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 757

An act to amend Sections 14612, 22825.01, 25350.8, 25350.85, 25350.10, 25350.105, 26826.4, 26827, 68086, 68933, and 69926.5 of, and to add and repeal Section 14612.2 of, the Government Code, to amend Section 62.5 of the Labor Code, to amend and repeal Section 6611 of the Public Contract Code, to amend Section 40433 of, and to repeal Section 40409 of, the Public Resources Code, to amend Section 97.68 of, and to add Section 97.46 to, the Revenue and Taxation Code, to amend Section 17604 of the Welfare and Institutions Code, and to amend Item 3910-001-0387 of Section 2.00 of Chapter 157 of the Statutes of 2003, relating to state and local government.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. 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 both of the following:

(1) Services that the Legislature or Governor requires state agencies to purchase from the department.

(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 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 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 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 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 Section 965.2, the director 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.

(h) Notwithstanding Section 14957, the director 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.

SEC. 2. Section 14612.2 is added to the Government Code, to read:

14612.2. (a) Notwithstanding Chapter 7 (commencing with Section 14850) of Part 5.5 of Division 3 of Title 2 of, or Section 14901 of, the Government Code, 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 cities, 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).

(b) This section shall remain operative only until the effective date of the Budget Act of 2004 or July 1, 2004, whichever is later, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 22825.01 of the Government Code, as amended by Chapter 228 of the Statutes of 2003, is amended to read:

22825.01. (a) As used in this section, the following definitions shall apply:

(1) A "rural area" means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants who live in the area.

(2) ''Coinsurance'' means the provision of a medical plan design in which the plan or insurer and state employee or annuitant share the cost of hospital or medical expenses at a specified ratio.

(3) A ''deductible'' means the annual amount of out-of-pocket medical expenses that state employees or annuitants must pay before the insurer or self-funded plan begins paying for expenses.

(4) ''Department'' means the Department of Personnel Administration.

(5) ''Program'' means the Rural Health Care Equity Program.

(b) (1) The Rural Health Care Equity Program is hereby established for the purpose of funding the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care costs, which would otherwise be covered if the state employee or annuitant was enrolled in a board-approved health maintenance organization plan, paid by employees and annuitants living in rural areas, as authorized by this section. The program shall be administered by the department or by a third-party administrator approved by the department in a manner consistent with all applicable state and federal laws. The board shall determine the rural area for each subsequent fiscal year at the same meeting when the board approves premiums for health maintenance organizations.

(2) Separate accounts shall be maintained within the program for (A) employees, as defined in subdivision (c) of Section 3513; (B) excluded employees, as defined in subdivision (b) of Section 3527; and (C) annuitants as defined in subdivision (e) of Section 22754.

(c) Moneys in the Rural Health Care Equity Program shall be allocated to the separate accounts as follows:

(1) As the employer's contribution with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and who is otherwise eligible, an amount to be determined through the collective bargaining process.

(2) As the employer's contribution with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and who is otherwise eligible, an amount equal to, but not to exceed, the amount given to eligible state employees, as defined in subdivision (c) of Section 3513, who live in a rural area.

(3) As the employer's contribution with respect to each annuitant, as defined in subdivision (e) of Section 22754, who lives in a rural area, is not a Medicare participant, resides in California, and who is otherwise eligible, an amount not to exceed five hundred dollars ($500) per year.

(4) As to the state's contribution with respect to each state annuitant, as defined in subdivision (e) of Section 22754 who lives in a rural area, resides in California, participates in a board-approved, Medicare-coordinated health plan, participates in a board-approved

health plan, and is otherwise eligible, an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The state shall not reimburse for penalty amounts.

(5) As to an employee who enters state service or leaves state service during a fiscal year, contributions for the employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit, including a person who enters the bargaining unit by promotion in mid-fiscal year.

(d) Each fund of the State Treasury, other than the General Fund, shall reimburse the General Fund for any sums allocated pursuant to subdivision (c) for employees whose compensation is paid from that fund. That reimbursement shall be accomplished using the following methodology:

(1) On or before December 1 of each year, the Department of Personnel Administration shall provide a listing of active state employees who participated in the Rural Health Care Equity Program in the immediately preceding fiscal year to each employing department.

(2) On or before January 15 of each year, every department that employed an active state employee identified by the Department of Personnel Administration as a participant in the Rural Health Care Equity Program shall provide the Department of Personnel Administration with a listing of the funds used to pay each employee's salary, along with the proportion of each active state employee's salary attributable to each fund.

(3) Using the information provided by the employing departments, the Department of Personnel Administration shall compile a listing of Rural Health Care Equity Program payments attributable to each fund. On or before February 15 of each year, the Department of Personnel Administration shall transmit this list to the Department of Finance.

(4) The Department of Finance shall certify to the Controller the amount to be transferred from the unencumbered balance of each fund to the General Fund.

(5) The Controller shall transfer to the General Fund from the unencumbered fund balance of each impacted fund the amount specified by the Department of Finance.

(6) To ensure the equitable allocation of costs, the Director of the Department of Personnel Administration or the Director of Finance may require an audit of departmental reports.

(e) For any sums allocated pursuant to subdivision (c) for annuitants, funds, other than the General Fund, shall be charged a fair share of the state's contribution in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3 of Title 2. On or before July 31 of each year, the Department of Personnel

Administration shall provide the Department of Finance with the total costs allocated pursuant to subdivision (c) for annuitants in the immediately preceding fiscal year. The reported costs shall not include expenses that have been incurred but not claimed as of July 31.

(f) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of an employee who lives in a rural area and who is otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available in an area that is open for enrollment for the employee, (1) subsidize the preferred provider plan premiums for the employee, by an amount equal to the difference between the weighted average of board-approved health maintenance organization premiums and the lowest board-approved preferred provider plan premium available under this part and (2) reimburse the employee for a portion or all of his or her incurred deductibles, coinsurances, and other out-of-pocket health-related expenses, that would otherwise be covered if the employee were enrolled in a board-approved health maintenance organization plan.

These subsidies and reimbursements shall be provided according to a plan determined by the department, which may include, but is not limited to, a supplemental insurance plan, a medical reimbursement account, or a medical spending account plan.

(g) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of eligible annuitants, as defined in subdivision (e) of Section 22754, who live in rural areas, reside in California, and who are otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available and open to enrollment by the annuitant, either (1) reimburse the annuitant if he or she is not a Medicare participant, for some or all of his or her deductibles, not to exceed five hundred dollars ($500) per fiscal year, or (2) reimburse Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month, exclusive of penalties. These reimbursements shall be provided by the department. Notwithstanding any other provision of law, any annuitant who cannot be located within a period of three months and whose disbursement is returned to the Controller as unclaimed is ineligible to participate in the program.

The state shall not reimburse for penalty amounts.

(h) Any moneys remaining in any account of the program at the end of any fiscal year shall remain in the account for use in subsequent fiscal years until the account is terminated. Moneys remaining in any account of the program upon termination, after payment of all outstanding

expenses and claims incurred prior to the date of termination, shall be deposited in the General Fund.

(i) The Legislature finds and declares that the Rural Health Care Equity Program is established for the exclusive benefit of employees, annuitants, and family members.

(j) The amendments made to this section by Chapter 228 of the Statutes of 2003, as further amended by a subsequently chaptered bill in the first year of the 2003–04 Regular Session, shall become operative on January 1, 2004. This section shall cease to be operative on January 1, 2005, or on an earlier date as the board makes a formal determination that HMOs are no longer the most cost-effective health care plans offered by the board.

SEC. 3.1. Section 25350.8 of the Government Code is amended to read:

25350.8. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from that portion of the taxes imposed by the County of Orange in excess of 1 percent, and for the period beginning on and after July 1, 2004, and ending when the rate modifications in subdivision (a) of Section 7203.1 of the Revenue and Taxation Code cease to apply, that are derived from that portion of the taxes imposed by that county in excess of one-half of 1 percent, pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, and that are permitted to be deposited to the general fund of the county pursuant to paragraph (1) of subdivision (a) of Section 29530.5 shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the years 1996 and 1997, including obligations executed and delivered or issued before 2010, to refund those certificates of participation or lease revenue bonds, to finance or refinance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligations may not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county may not exceed the amounts to be paid in that fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between the County of Orange and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge granted by this section that, as long as any of the certificates of participation or lease revenue bonds entitled to the pledge granted by this section shall remain

outstanding, (1) the provisions of Section 7202 that authorize the imposition of the taxes may not be repealed and (2) the provisions of paragraph (1) of subdivision (a) of Section 29530.5 may not be repealed prior to July 1, 2011, nor may either section be altered or amended in any manner that would adversely affect the security of, or the ability of the county to pay, the principal of and interest on the certificates of participation or lease revenue bonds entitled to the pledge granted by this section. However, nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 3.2. Section 25350.85 of the Government Code is amended to read:

25350.85. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from that portion of the taxes imposed by a county of the second class in excess of 1 percent, and for the period beginning on and after July 1, 2004, and ending when the rate modifications in subdivision (a) of Section 7203.1 of the Revenue and Taxation Code cease to apply, that are derived from that portion of the taxes imposed by that county in excess of one-half of 1 percent, pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, and that are permitted to be deposited in the general fund of a county pursuant to paragraph (1) of subdivision (a) of Section 29530.6 shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the year 1996, including obligations executed and delivered or issued before 2010 to refund those certificates of participation or lease revenue bonds, to finance or refinance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligations may not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county may not exceed the amount to be paid in that fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between a county of the second class and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge

granted by this section that, so long as any of the certificates of participation or lease revenue bonds entitled to the pledge granted by this section shall remain outstanding, (1) the provisions of Section 7202 that authorize the imposition of the taxes may not be repealed and (2) the provisions of paragraph (1) of subdivision (a) of Section 29530.6 may not be repealed prior to July 1, 2011, nor may either section be altered or amended prior to that date in any manner that would adversely affect the security of, or the ability of the county to pay, the principal of and interest on the certificates of participation or lease revenue bonds entitled to the pledge granted by this section. However, nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 3.3. Section 25350.10 of the Government Code is amended to read:

25350.10. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from the taxes imposed by the County of Orange pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, other than that portion of those taxes specified in Section 29530.5, and any moneys allocated from the Sales and Use Tax Compensation Fund to the County of Orange pursuant to Section 97.68 of the Revenue and Taxation Code, shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the years 1996 and 1997, including obligations executed and delivered or issued before 2010, to refund those certificates of participation or lease revenue bonds, to finance or refinance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligations may not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county may not exceed the amounts to be paid in the fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between the county and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge granted by this section that, as long as any of the certificates of participation or lease revenue bonds

entitled to the pledge granted by this section shall remain outstanding, the provisions of Section 7202 of the Revenue and Taxation Code that authorize the imposition of the taxes may not be repealed. That section may not be altered or amended in any manner that would adversely affect the security of, or the ability of the county to pay, the principal of and interest on the certificates of participation or lease revenue bonds entitled to the pledge granted by this section. However, nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 3.4. Section 25350.105 of the Government Code is amended to read:

25350.105. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from the taxes imposed by a county of the second class pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, other than that portion of those taxes specified in Section 29530.6, and any moneys allocated from the Sales and Use Tax Compensation Fund to the county of the second class pursuant to Section 97.68 of the Revenue and Taxation Code, shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the year 1996, including obligations executed and delivered or issued before 2010 to refund those certificates of participation or lease revenue bonds, to finance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligation may not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county may not exceed the amounts to be paid in the fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between the county and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge granted by this section that, as long as any of the certificates of participation or lease revenue bonds entitled to the pledge granted by this section shall remain outstanding, the provisions of Section 7202 of the Revenue and Taxation Code that authorize the imposition of the taxes may not be repealed. However,

nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 3.5. Section 26826.4 of the Government Code is amended to read:

26826.4. (a) In addition to the first appearance fee required by Section 26820.4 or 72055, a complex case fee shall be paid to the clerk at the time of the filing of the first paper if the case is designated as complex pursuant to the California Rules of Court. However, the total complex fees collected from all plaintiffs appearing in a complex case shall not exceed ten thousand dollars ($10,000).

(b) In addition to the first appearance fee required under Section 26826 or 72056, a complex case fee shall be paid on behalf of each defendant, intervenor, respondent, or adverse party, whether filing separately or jointly, at the time that party files its first paper in a case if the case is designated or counterdesignated as complex pursuant to the California Rules of Court. This additional complex fee shall be charged to each defendant, intervenor, respondent, or adverse party appearing in the case, but the total complex fees collected from all the defendants, intervenors, respondents, or other adverse parties appearing in a complex case shall not exceed ten thousand dollars ($10,000).

(c) In each case in which a court determines that the case is a complex case pursuant to the California Rules of Court, all parties who have not paid the fees required under subdivision (a) or (b) shall pay the complex case fee prescribed by those subdivisions to the clerk of the court within 10 calendar days of the filing of the court's order.

(d) In each case in which the court determines that a case that has been designated or counterdesignated as complex is not a complex case, the court shall order reimbursement to the parties of the amount of any complex case fees that the parties have previously paid pursuant to subdivision (a) or (b).

(e) (1) In each case determined to be complex in which the total fees actually collected exceed, or if collected would exceed, the limit in subdivision (a), the court shall make any order as is necessary to ensure that the total complex fees paid by the plaintiffs appearing in the case do not exceed the limit and that the complex fees paid by the plaintiffs are apportioned fairly among the plaintiffs.

(2) In each case determined to be complex in which the total fees actually collected exceed, or if collected would exceed, the limit in subdivision (b), the court shall make any order as is necessary to ensure

that the total complex fees paid by the defendants, intervenors, respondents, or other adverse parties appearing in the case do not exceed the limit and that the complex fees paid by those parties are apportioned fairly among those parties.

(f) The complex case fee established by this section shall be five hundred dollars ($500), unless the fee is reduced pursuant to this section. The fee shall be deposited in a special account in the county treasury and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

(g) The fees provided by this section shall be subject to the surcharge imposed by Section 68087.

(h) The fees provided by this section are in addition to the total filing fee authorized by Section 26820.4, 26826, 72055, or 72056, or any other fee authorized by law.

(i) Failure to pay the fees required by this section shall have the same effect as the failure to pay a filing fee, and shall be subject to the same enforcement and penalties.

(j) The complex fees provided for in this section shall be charged in all complex cases filed on or after August 18, 2003.

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

SEC. 4. Section 26827 of the Government Code, as amended by Chapter 159 of the Statutes of 2003, is amended to read:

26827. (a) The total fee for filing the first petition for letters of administration or letters testamentary, or the first petition for special letters of administration with the powers of a general personal representative pursuant to Section 8545 of the Probate Code, or a first account of a testamentary trustee of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code is, as follows:

(1) One hundred eighty-five dollars ($185) for estates or trusts under two hundred fifty thousand dollars ($250,000).

(2) Two hundred fifty dollars ($250) for estates or trusts of at least two hundred fifty thousand dollars ($250,000) and less than five hundred thousand dollars ($500,000).

(3) Three hundred fifty dollars ($350) for estates or trusts of at least five hundred thousand dollars ($500,000) and less than seven hundred fifty thousand dollars ($750,000).

(4) Five hundred dollars ($500) for estates or trusts of at least seven hundred fifty thousand dollars ($750,000) and less than one million dollars ($1,000,000).

(5) One thousand dollars ($1,000) for estates or trusts of at least one million dollars ($1,000,000) and less than one million five hundred thousand dollars ($1,500,000).

(6) Two thousand dollars ($2,000) for estates or trusts of at least one million five hundred thousand dollars ($1,500,000) and less than two million dollars ($2,000,000).

(7) Two thousand five hundred dollars ($2,500) for estates or trusts of at least two million dollars ($2,000,000) and less than two million five hundred thousand dollars ($2,500,000).

(8) Three thousand five hundred dollars ($3,500) for estates or trusts of at least two million five hundred thousand dollars ($2,500,000) and less than three million five hundred thousand dollars ($3,500,000).

(9) Three thousand five hundred dollars ($3,500) plus 0.2 percent of the amount over three million five hundred thousand dollars ($3,500,000) for estates or trusts of three million five hundred thousand dollars ($3,500,000) or more.

(b) The petitioner under subdivision (a) shall estimate the fair market value of the decedent's estate at the date of the decedent's death in the petition, without reference to encumbrances or other obligations on estate property. The filing fee shall be determined based on the estimate by the petitioner at the time the petition is filed. If the final appraised value of the decedent's estate would result in a filing fee different from the filing fee actually paid, an adjustment shall be made at the time of the final account, under rules adopted by the Judicial Council. The filing fee for a trustee under subdivision (a) shall be based on the value of the trust shown in the first account.

(c) The total fee for filing the first petition for special letters of administration without the powers of a general personal representative, the first petition for letters of guardianship or letters of conservatorship, a petition for compromise of a minor's claim, a petition pursuant to Section 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code, except as provided in Section 13652 of the Probate Code, or a petition to contest any will or codicil is one hundred eighty-five dollars ($185).

(d) A fee of one hundred eighty-five dollars ($185) shall also be charged for filing any subsequent petition of a type described in subdivision (a) or (c) in the same proceeding by a person other than the original petitioner. If a person is appointed on a subsequent petition and qualifies as administrator, executor, or special administrator with the powers of a general personal representative under subdivision (a), the successful personal representative shall reimburse the original petitioner in excess of one hundred eighty-five dollars ($185), less any unpaid costs awarded to the successful petitioner against the original petitioner,

under rules adopted by the Judicial Council. The reimbursement shall be an expense of administration in the estate.

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

SEC. 5. Section 68086 of the Government Code, as amended by Chapter 159 of the Statutes of 2003, is amended to read:

68086. (a) The following provisions apply in superior court:

(1) In addition to any other fee required in civil actions or cases, for each proceeding lasting more than one hour, a fee equal to the actual cost of providing that service shall be charged per one-half day of services to the parties, on a pro rata basis, for the services of an official reporter on the first and each succeeding judicial day those services are provided pursuant to Section 269 of the Code of Civil Procedure.

(2) All parties shall deposit their pro rata shares of these fees with the clerk of the court as specified by the court, but not later than the conclusion of each day's court session.

(3) For purposes of this section, ''one-half day'' means any period of judicial time, in excess of one hour but not more than four hours, during either the morning or afternoon court session.

(4) In addition to the fees authorized by Sections 26820.4, 26826, 72055, and 72056, a one-time fee of twenty-five dollars ($25) for the cost of the services of an official reporter shall be charged upon the filing of a first paper in a civil action or proceeding in the superior court, unless the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less. No additional fee shall be charged to a party for the cost of the services of an official reporter in proceedings lasting one hour or less.

(5) The costs for the services of the official reporter shall be recoverable as taxable costs by the prevailing party as otherwise provided by law.

(6) The Judicial Council shall adopt rules to ensure all of the following:

(A) That parties are given adequate and timely notice of the availability of an official reporter.

(B) That if an official reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefore recoverable as provided in paragraph (5).

(C) That if the services of an official pro tempore reporter are utilized pursuant to subparagraph (B), no other charge will be made to the parties.

(b) The fees collected pursuant to this section shall only be used to pay the cost for services of an official reporter in civil proceedings.

(c) The Judicial Council shall report on or before February 1 of each year to the Joint Legislative Budget Committee on the total fees collected and the total amount spent for official court reporter services in civil proceedings in the prior fiscal year.

SEC. 6. Section 68933 of the Government Code, as added by Chapter 159 of the Statutes of 2003, is amended to read:

68933. (a) There is hereby established the Appellate Court Trust Fund, the proceeds of which shall be used for the purpose of funding the courts of appeal and the Supreme Court.

(b) The fund, upon appropriation by the Legislature, shall be apportioned by the Judicial Council to the courts of appeal and the Supreme Court as determined by the Judicial Council, taking into consideration all other funds available to each court and the needs of each court, in a manner that promotes equal access to the courts, ensures the ability of the courts to carry out their functions, and promotes implementation of statewide policies.

(c) Notwithstanding any other provision of law, the fees listed in subdivision (d) shall all be transmitted for deposit in the Appellate Court Trust Fund within the State Treasury.

(d) This section applies to all fees collected pursuant to Section 68926, excluding that portion subject to Section 68926.3; subdivision (b) of Section 68926.1; and Sections 68927, 68928, 68929, 68930, and 68932.

(e) The Appellate Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Appellate Court Trust Fund semiannually and used as specified in this section.

SEC. 7. Section 69926.5 of the Government Code is amended to read:

69926.5. (a) To ensure and maintain adequate funding for court security, a surcharge of twenty dollars ($20) is added to the total fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056.

(b) In addition to the surcharge in subdivision (a), a surcharge of twenty dollars ($20) is added to the total filing fee collected in a case pursuant to Section 26820.4, 26826, or 26827, a surcharge of twenty dollars ($20) is added to the total filing fee collected in a limited civil case pursuant to Section 72055 or 72056 where the amount demanded, excluding attorney's fees and costs, is in excess of ten thousand dollars ($10,000), and a surcharge of ten dollars ($10) is added to the total filing fee collected in a limited civil case pursuant to Section 72055 or 72056 where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000), or less. The surcharges in this subdivision shall be collected in cases filed from January 1, 2004, to June 30, 2004, inclusive. The purpose of this surcharge is to stabilize funding for court

security at the current level and is not intended to increase the funding available for court security in the 2003–04 fiscal year.

(c) Notwithstanding any other provision of law, the surcharges collected pursuant to subdivisions (a) and (b) shall all be deposited in a special account in the county treasury, and transmitted therefrom monthly to the State Controller for deposit in the Trial Court Trust Fund.

SEC. 8. 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.

(b) The fund shall consist of assessments made pursuant to subdivision (e). Costs to 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) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4750) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(e) (1) Separate assessments shall be levied by the director upon all employers as defined in Section 3300 for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Subsequent Injuries Benefits Trust Fund. The total amount of the assessments 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 adopt reasonable regulations governing the manner of collection of the assessments. The regulations shall require the assessments 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 assessments to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessments paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(2) The regulations adopted pursuant to paragraph (1) shall be exempt from 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. 9. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

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

SEC. 9.3. Section 40409 of the Public Resources Code, as added by Chapter 228 of the Statutes of 2003, is repealed:

SEC. 9.5. Section 40433 of the Public Resources Code, as amended by Chapter 228 of the Statutes of 2003, is amended to read:

40433. The Governor shall appoint one adviser for each member of the board upon the recommendation of the board member.

SEC. 10. Section 97.46 is added to the Revenue and Taxation Code, to read:

97.46. Notwithstanding subdivision (d) of Section 97.2 and subdivision (d) of Section 97.3, the revenue deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681.9 of the Health and Safety Code shall be allocated as follows:

(a) To county offices of education, the amount of those revenues that would be allocated pursuant to paragraph (1) of subdivision (d) of Section 97.2 and paragraph (1) of subdivision (d) of Section 97.3 multiplied by 1.85185.

(b) To community college districts, the amount of those revenues that would be allocated pursuant to paragraph (1) of subdivision (d) of Section 97.2 and paragraph (1) of subdivision (d) of Section 97.3 multiplied by 1.85185.

(c) To school districts the remainder after the allocations made in subdivisions (a) and (b).

SEC. 11. Section 97.68 of the Revenue and Taxation Code is amended to read:

97.68. Notwithstanding any other provision of law, in allocating ad valorem property tax revenue allocations for each fiscal year during the fiscal adjustment period, all of the following apply:

(a) (1) The total amount of ad valorem property tax revenue otherwise required to be allocated to a county's Educational Revenue Augmentation Fund shall be reduced by the countywide adjustment amount.

(2) The countywide adjustment amount shall be deposited in a Sales and Use Tax Compensation Fund that shall be established in the treasury of each county.

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

(1) ''Fiscal adjustment period'' has the same meaning as ''revenue exchange period'' as defined in subdivision (b) of Section 7203.1.

(2) ''Countywide adjustment amount'' means the combined total revenue loss of the county and each city in the county that is annually estimated by the Director of Finance, based on the taxable sales in that county in the prior fiscal year as determined by the State Board of Equalization and reported to the director on or before August 15 of each fiscal year during the fiscal adjustment period, to result for each of those

fiscal years from the 0.5 percent reduction in local sales and use rate tax authority applied by Section 7203.1.

(c) For each fiscal year during the fiscal adjustment period, moneys in the Sales and Use Tax Compensation Fund shall be allocated among the county and the cities in the county, and those allocations shall be subsequently adjusted, as follows:

(1) The Director of Finance shall, on or before September 1 of each fiscal year during the fiscal adjustment period, notify each county auditor of that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and to each city within that county.

(2) The county auditor shall allocate revenues in the Sales and Use Tax Compensation Fund among the county and cities in the county in the amounts described in paragraph (1). The auditor shall allocate one-half of the amount described in paragraph (1) in each January during the fiscal adjustment period and shall allocate the balance of that amount in each May during the fiscal adjustment period.

(3) After the end of each fiscal year during the fiscal adjustment period, other than a fiscal year subject to subdivision (d), the Director of Finance shall, based on the actual taxable sales for the prior fiscal year, recalculate each amount estimated under paragraph (1) and notify the county auditor of the recalculated amount.

(4) If the amount recalculated under paragraph (3) for the county or any city in the county is greater than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, transfer an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.

(5) If the amount recalculated under paragraph (3) for the county or any city in the county is less than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county Educational Revenue Augmentation Fund.

(6) If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the transfers required by paragraph (4), the county auditor shall transfer from the county Educational Revenue Augmentation Fund an amount sufficient to make the full amount of these transfers.

(d) (1) If Section 7203.1 ceases to be operative during any calendar quarter that is not the calendar quarter in which the fiscal year begins, the excess amount, as defined in paragraph (2), of the county and each

city in the county shall be reallocated from each of those local agencies to the Educational Revenue Augmentation Fund.

(2) For purposes of this subdivision, ''excess amount'' means the product of both of the following:

(A) The total amount of ad valorem property tax revenue allocated to that local agency pursuant to paragraph (2) of subdivision (c).

(B) That percentage of the fiscal year in which Section 7203.1 is not operative.

(e) For the 2005–06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, may not reflect any portion of any property tax revenue allocation required by this section for a preceding fiscal year.

(f) This section may not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3, or Article 4 (commencing with Section 98), had this section not been enacted. The allocation made pursuant to subdivisions (a) and (c) shall be adjusted to comply with this paragraph.

(2) Require an increased ad valorem property tax revenue allocation to a community redevelopment agency.

(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county.

SEC. 12. Section 17604 of the Welfare and Institutions Code is amended to read:

17604. (a) All motor vehicle license fee revenues collected in the 1991–92 fiscal year that are deposited to the credit of the Local Revenue Fund shall be credited to the Vehicle License Fee Account of that fund.

(b) (1) For the 1992–93 fiscal year and fiscal years thereafter, from vehicle license fee proceeds from revenues deposited to the credit of the Local Revenue Fund, the Controller shall make monthly deposits to the Vehicle License Fee Account of the Local Revenue Fund until the deposits equal the amounts that were allocated to counties, cities, and cities and counties as general purpose revenues in the prior fiscal year pursuant to this chapter from the Vehicle License Fee Account in the Local Revenue Fund and the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the Local Revenue Fund.

(2) Any excess vehicle fee revenues deposited into the Local Revenue Fund pursuant to Section 11001.5 of the Revenue and Taxation Code shall be deposited in the Vehicle License Fee Growth Account of the Local Revenue Fund.

(c) (1) On or before the 27th day of each month, the Controller shall allocate to each county, city, or city and county, as general purpose revenues the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Vehicle License Fee Account of the Local Revenue Fund, in accordance with paragraphs (2) and (3).

(2) For the 1991–92 fiscal year, allocations shall be made in accordance with the following schedule:

Jurisdiction	Allocation Percentage
Alameda	4.5046
Alpine	0.0137
Amador	0.1512
Butte	0.8131
Calaveras	0.1367
Colusa	0.1195
Contra Costa	2.2386
Del Norte	0.1340
El Dorado	0.5228
Fresno	2.3531
Glenn	0.1391
Humboldt	0.8929
Imperial	0.8237
Inyo	0.1869
Kern	1.6362
Kings	0.4084
Lake	0.1752
Lassen	0.1525
Los Angeles	37.2606
Madera	0.3656
Marin	1.0785
Mariposa	0.0815
Mendocino	0.2586
Merced	0.4094
Modoc	0.0923
Mono	0.1342
Monterey	0.8975
Napa	0.4466
Nevada	0.2734
Orange	5.4304

Placer	0.2806
Plumas	0.1145
Riverside	2.7867
Sacramento	2.7497
San Benito	0.1701
San Bernardino	2.4709
San Diego	4.7771
San Francisco	7.1450
San Joaquin	1.0810
San Luis Obispo	0.4811
San Mateo	1.5937
Santa Barbara	0.9418
Santa Clara	3.6238
Santa Cruz	0.6714
Shasta	0.6732
Sierra	0.0340
Siskiyou	0.2246
Solano	0.9377
Sonoma	1.6687
Stanislaus	1.0509
Sutter	0.4460
Tehama	0.2986
Trinity	0.1388
Tulare	0.7485
Tuolumne	0.2357
Ventura	1.3658
Yolo	0.3522
Yuba	0.3076
Berkeley	0.0692
Long Beach	0.2918
Pasadena	0.1385

(3) For the 1992–93, 1993–94, and 1994–95 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

(4) For the 1995–96 fiscal year, allocations shall be made in the same amounts as distributed in the 1994–95 fiscal year from the Vehicle License Fee Account and the Vehicle License Fee Growth Account after adjusting the allocation amounts by the amounts specified for the following counties:

Alpine	$(11,296)
Amador	25,417
Calaveras	49,892
Del Norte	39,537
Glenn	(12,238)
Lassen	17,886
Mariposa	(6,950)
Modoc	(29,182)
Mono	(6,950)
San Benito	20,710
Sierra	(39,537)
Trinity	(48,009)

(5) For the 1996–97 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

Initial proceeds deposited in the Vehicle License Fee Account in the 2003–04 fiscal year in the amount that would otherwise have been transferred pursuant to Section 10754 of the Revenue and Taxation Code for the period June 20, 2003, to July 15, 2003, inclusive, shall be deemed to have been deposited during the period June 16, 2003, to July 15, 2003, inclusive, and allocated to cities, counties, and a city and county during the 2002–03 fiscal year.

(d) The Controller shall make monthly allocations from the amount deposited in the Vehicle License Collection Account of the Local Revenue Fund to each county in accordance with a schedule to be developed by the State Department of Mental Health in consultation with the California Mental Health Directors Association, which is compatible with the intent of the Legislature expressed in the act adding this subdivision.

SEC. 13. (a) The Director of Finance shall work with the Treasurer, the State Allocation Board, and any other executive agencies as necessary, to achieve a combined savings of no less than fifty million dollars ($50,000,000) in General Fund debt service costs in the 2003–04 and 2004–05 fiscal years.

(b) It is not the intent of the Legislature that these savings impair existing contracts or disrupt phases of projects that are currently underway.

SEC. 14. Item 3910-001-0387 of Section 2.00 of Chapter 157 of the Statutes of 2003 is amended to read:

3910-001-0387—For support of California Integrated Waste Management Board, payable from the Integrated Waste Management Account, Integrated Waste Management Fund 36,284,000

Schedule:

(1) 11–Waste Reduction and Management	78,461,000
(2) 30.01–Administration	8,545,000
(3) 30.02–Distributed Administration	–8,545,000
(4) Reimbursements	–585,000
(5) Amount payable from Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund (Item 3910-001-0005)	–152,000
(6) Amount payable from California Used Oil Recycling Fund (Item 3910-001-0100)	–4,128,000
(7) Amount payable from California Used Oil Recycling Fund (paragraph (4) of subdivision (a) of Section 48653 of the Public Resources Code)	–2,182,000
(8) Amount payable from California Used Oil Recycling Fund (paragraph (1) of subdivision (a) of Section 48653 of the Public Resources Code)	–2,336,000
(9) Amount payable from California Tire Recycling Management Fund (Item 3910-001-0226)	–27,679,000
(10) Amount payable from Recycling Market Development Revolving Loan Account, Integrated Waste Management Fund (Item 3910-001-0281)	–1,820,000
(11) Amount payable from Solid Waste Disposal Site Cleanup Trust Fund (Item 3910-001-0386)	–532,000

(12) Amount payable from Integrated Waste Management Account, Integrated Waste Management Fund (Item 3910-006-0387)	–640,000
(13) Amount payable from Farm and Ranch Solid Waste Cleanup and Abatement Account (Item 3910-001-0558)	–1,017,000
(14) Amount payable from Federal Trust Fund (Item 3910-001-0890)	–106,000
(15) Amount payable from Rigid Container Account (Item 3910-001-3024)	–1,000,000

Provisions:

1. Notwithstanding subdivision (h) of Section 42023.1 of the Public Resources Code, the California Integrated Waste Management Board may offset the costs of administering the revolving loan program for Recycling Market Development Zones with funds appropriated in this item.
2. The amount appropriated in this item includes revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.
3. Of the amount appropriated in this item, $685,000 is provided to support six (6) Advisor, four (4) Executive Assistant, and one (1) Office Technician positions to support members of the California Integrated Waste Management Board. These positions shall be administratively established by the Department of Finance for the 2003–04 fiscal year, and shall be considered permanent positions thereafter.

SEC. 15. 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 758

An act to repeal and add Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 of, the Fish and Game Code, relating to wildlife.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 of the Fish and Game Code is repealed.

SEC. 2. Article 3 (commencing with Section 1570) is added to Chapter 5 of Division 2 of the Fish and Game Code, to read:

Article 3. Shared Habitat Alliance for Recreational Enhancement Program

1570. In establishing the Shared Habitat Alliance for Recreational Enhancement (''SHARE'') Program, it is the intent of the Legislature to encourage private landowners to voluntarily make their land available to the public for wildlife-dependent recreational activities. The Legislature further encourages private landowners to use any funds received from the SHARE program for wildlife conservation purposes on their property. The SHARE program shall be a collaborative effort by all participants to facilitate wildlife-dependent recreational activities on private land at minimal expense to the state. The Legislature declares that interested nongovernmental organizations are the key to developing, planning, and implementing the SHARE program.

1571. For purposes of this article, the following definitions apply:

(a) ''Agreement'' includes, but is not limited to, a contract, license, easement, memorandum of understanding, or lease.

(b) ''Partnership'' means a collaborative effort involving financial or in-kind contributions by nongovernmental organizations, the department, and other interested parties working in concert to effect the goals of the program.

(c) ''Private landowner'' means an owner of any possessory interest in real property that is suitable for use for wildlife-dependent recreational activities.

(d) ''Program'' means the SHARE program established under this article.

(e) ''Wildlife-dependent recreational activities'' means hunting, fishing, wildlife observation, conservation education, and related outdoor activities.

1572. (a) The department, in partnership with nonprofit conservation groups and other interested nongovernmental organizations that seek to increase and enhance wildlife-dependent recreational opportunities, shall work cooperatively to plan and develop a program to facilitate public access to private lands for wildlife-dependent recreational activities.

(b) Once the terms of the program have been established and approved by the partnership, the commission shall verify that sufficient demonstration of private landowner and program participant interest has been shown to support the program. The Department of Finance shall verify that sufficient funds exist in the SHARE Account to start the program. Upon that verification, in order to facilitate the implementation of the program, the commission shall adopt regulations and fees for the management and control of wildlife-dependent recreational activities on land that is subject to this article.

(c) The SHARE Account is hereby established in the Fish and Game Preservation Fund. Money deposited in the SHARE Account from the sources cited in subdivision (d) shall only be used for the purposes set forth in this article and to repay the General Fund or the Fish and Game Preservation Fund, as appropriate, for any expenses incurred by the department, commission, or the Department of Finance in establishing the SHARE Program.

(d) No General Fund money shall be used for the program. The department may impose user fees or apply for grants, federal funds, or other contributions from nonstate sources to fund the program. Funds may also be used for wildlife conservation purposes on lands subject to an agreement under the program. Notwithstanding Section 13220, no money shall be available for the program unless the Legislature appropriates money to the department therefor.

(e) The department shall maintain data on the types of wildlife-dependent recreational activities preferred by users.

1573. (a) (1) The department may enter into a voluntary agreement with a private landowner, including an agreement under which the private landowner is compensated by the department for public use of the land, to provide public access for wildlife-dependent recreational activities. Any financial compensation offered to a private landowner pursuant to this paragraph shall not exceed thirty dollars ($30) per acre, and shall be commensurate with the quality of the wildlife-dependent recreational opportunities that are to be provided on the property.

(2) The department also may enter into a voluntary agreement with a private landowner to facilitate access to adjacent public land, upon approval of the governmental entity that holds title to the land. This article does not authorize a private landowner to exclude persons not participating in the SHARE program from using public land for wildlife-dependent activities.

(b) Notwithstanding any other provision of law, the department shall keep confidential and not release to the public any personal identifying information received from a private landowner participating in the program, unless the director determines that release of that information is necessary for the administration of the program.

(c) Either the department or a private landowner may, in writing, modify or cancel an agreement executed under the program, at any time. Upon cancellation or modification of the agreement by either party, the other party shall be reimbursed for any lost revenues or expenses incurred pursuant to the terms of the original agreement.

(d) In addition to any other protection or remedy under law, the protections and remedies afforded to an owner of an estate or any other interest in real property under Section 846 of the Civil Code shall apply to a private landowner participating in the program.

(e) The department shall require every person who wants to use land that is subject to an agreement pursuant to subdivision (a), prior to using that land, to sign a waiver that releases the department or any private group, governmental entity, or other organization involved in administering the program, and the private landowner, from liability for any injury or damage that arises from, or is connected with that person's use of the land. Upon request, the department shall provide a copy of the waiver to any of the parties to the waiver.

(f) Every agreement executed pursuant to the program shall prohibit the take of nongame species by public participants in the program. An agreement may not authorize a private landowner to transfer a hunting or fishing license, stamp, or tag to another person, unless otherwise authorized by law.

(g) In determining which lands may be included in the program, the department shall give priority to those lands with the greatest wildlife habitat value. The department shall also include in the program private lands on which hunting is not allowed, in order to take into consideration the participation of the nonhunting public in the program.

1574. (a) The department may revoke, for up to three years, the public access privilege granted pursuant to this article, of any person who violates any law or regulation while on any property that is subject to an agreement under the program.

(b) The department shall enforce all applicable regulations established by the commission on property that is subject to an agreement executed under the program.

CHAPTER 759

An act to amend Section 7026.1 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 7026.1 of the Business and Professions Code is amended to read:

7026.1. The term ''contractor'' includes:

(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof.

(c) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this subdivision shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this subdivision shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor agency shall provide his or her license number to that temporary labor service agency.

(d) Any person not otherwise exempt by this chapter, who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryman who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(e) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforating, or abandoning any water well, cathodic protection well, or monitoring well.

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 760

An act to amend Section 65584 of the Government Code, relating to local planning.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 65584 of the Government Code is amended to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of

Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The council of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the

department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination. The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing need nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(2) Except as provided in paragraph (3), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(3) Paragraph (2) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

CHAPTER 761

An act relating to wetlands, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. The sum of twenty-five million dollars ($25,000,000), appropriated in Item 3760-302-0005 (subparagraph (B) of Schedule 2) of Section 2.00 of the Budget Act of 2000 (Chapter 52, Statutes of 2000) from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Bond Fund (Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code) to the State Coastal Conservancy for the Ballona Wetlands, is hereby reappropriated to the State Coastal Conservancy to acquire, protect, and restore the Ballona Wetlands in accordance with subdivision (f) of Section 5096.352 of the Public Resources Code.

SEC. 2. This act shall not become operative unless Senate Bill 666 is enacted and takes effect on or before January 1, 2004.

CHAPTER 762

An act to amend Sections 896, 911, 912, 916, 936, 938, 941, and 945.5 of, and to amend, renumber, and add Section 942 to, the Civil Code, relating to construction defects.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 896 of the Civil Code is amended to read:

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, ''systems'' include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, ''systems'' include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any

internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes,

regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, ''useful life'' means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, ''manufactured product'' means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these

standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

SEC. 2. Section 911 of the Civil Code is amended to read:

911. (a) For purposes of this title, except as provided in subdivision (b), ''builder'' means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.

(b) For the purposes of this title, ''builder'' does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.

SEC. 3. Section 912 of the Civil Code is amended to read:

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option,

use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

SEC. 4. Section 916 of the Civil Code is amended to read:

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section

and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

SEC. 5. Section 936 of the Civil Code is amended to read:

936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.

SEC. 6. Section 938 of the Civil Code is amended to read:

938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

SEC. 7. Section 941 of the Civil Code is amended to read:

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, ''action'' includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section.

SEC. 8. Section 942 of the Civil Code is amended and renumbered to read:

943. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or

violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.

SEC. 9. Section 942 is added to the Civil Code, to read:

942. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

SEC. 10. Section 945.5 of the Civil Code is amended to read:

945.5. A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an ''unforeseen act of nature'' means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or

manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.

(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

SEC. 11. It is the intent of the Legislature that the Department of Insurance conduct a study in consultation with the representatives of the labor, insurance, and building industries, to determine whether lower rates are justified for comprehensive general liability insurance policies with respect to construction defect claims arising out of projects built with apprentices enrolled in an apprenticeship program approved by the California Apprenticeship Council.

CHAPTER 763

An act to amend Sections 36601, 36606, 36621, 36622, 36623, 36625, 36627, 36628, 36629, 36631, 36632, 36637, 36650, 36660, 36670, and 36671 of, and to add Sections 36603.5 and 36628.5 to, and to add Chapter 3.5 (commencing with Section 36640) to Part 7 of Division 18 of, the Streets and Highways Code, relating to benefit assessments.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 36601 of the Streets and Highways Code is amended to read:

36601. The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

SEC. 2. Section 36603.5 is added to the Streets and Highways Code, to read:

36603.5. Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

SEC. 3. Section 36606 of the Streets and Highways Code is amended to read:

36606. ''Assessment'' means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

SEC. 4. Section 36621 of the Streets and Highways Code is amended to read:

36621. (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

SEC. 5. Section 36622 of the Streets and Highways Code is amended to read:

36622. The management district plan shall contain all of the following:

(a) A map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. Under no circumstances shall the boundaries of a proposed district overlap with the boundaries of another existing district created pursuant to this part. Nothing in this part prohibits the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989.

(d) The improvements and activities proposed for each year of operation of the district and the maximum cost thereof.

(e) The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

(f) The proposed source or sources of financing including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the

assessment to be levied against his or her property or business. The plan shall also state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for any properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

(*l*) Any other item or matter required to be incorporated therein by the city council.

SEC. 6. Section 36623 of the Streets and Highways Code is amended to read:

36623. If a city council proposes to levy an assessment that is consistent with the assessment proposed in the petition of property owners or businesses submitted pursuant to Section 36621 and with the management district plan submitted pursuant to Section 36622, the city shall provide notice of the public hearing set pursuant to paragraph (2) of subdivision (c) of Section 36621 to the property or business owners as required by Article XIII D of the California Constitution. The petition shall serve as the equivalent of a protest ballot procedure for purposes of Article XIII D. If a city council proposes to levy a new or increased assessment, or an assessment that is materially different from the assessment proposed in the petition and management plan, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code. However, notwithstanding the provisions of Section 53753 of the Government Code, if the assessment will be levied on businesses, the required notice shall be provided to the businesses that would be assessed, and only assessment ballots submitted by owners of

those businesses shall be tabulated in determining whether a majority protest exists.

SEC. 7. Section 36625 of the Streets and Highways Code is amended to read:

36625. (a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties or businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

SEC. 8. Section 36627 of the Streets and Highways Code is amended to read:

36627. Following adoption of the resolution establishing the district pursuant to Section 36625 or 36626, the clerk of the city shall record a

notice and an assessment diagram pursuant to Section 3114. If the assessment is levied on businesses, the text of the recorded notice shall be modified to reflect that the assessment will be levied on businesses, or specified categories of businesses, within the area of the district. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

SEC. 9. Section 36628 of the Streets and Highways Code is amended to read:

36628. The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

SEC. 10. Section 36628.5 is added to the Streets and Highways Code, to read:

36628.5. The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

SEC. 11. Section 36629 of the Streets and Highways Code is amended to read:

36629. All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

SEC. 12. Section 36631 of the Streets and Highways Code is amended to read:

36631. The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution establishing the management district plan described in Section 36622. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

SEC. 13. Section 36632 of the Streets and Highways Code is amended to read:

36632. (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

SEC. 14. Section 36637 of the Streets and Highways Code is amended to read:

36637. Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

SEC. 15. Chapter 3.5 (commencing with Section 36640) is added to Part 7 of Division 18 of the Streets and Highways Code, to read:

CHAPTER 3.5. FINANCING

36640. (a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of

formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

SEC. 16. Section 36650 of the Streets and Highways Code is amended to read:

36650. (a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

SEC. 17. Section 36660 of the Streets and Highways Code is amended to read:

36660. (a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

SEC. 18. Section 36670 of the Streets and Highways Code is amended to read:

36670. (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property or of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution

of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

SEC. 19. Section 36671 of the Streets and Highways Code is amended to read:

36671. (a) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

CHAPTER 764

An act to amend Sections 22869 and 22872 of the Government Code, relating to public employee health care benefits, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 22869 of the Government Code is amended to read:

22869. For purposes of this part, a ''domestic partnership'' shall be either of the following:

(a) Two people who meet all of the criteria set forth in Section 297 of the Family Code.

(b) Two people who meet all of the criteria of a ''domestic partnership,'' as defined by the governing board of a contracting agency, if the contracting agency adopted that definition prior to January 1, 2000.

SEC. 2. Section 22872 of the Government Code is amended to read:

22872. (a) In order to receive any benefit provided by this article, an employee or annuitant shall present the board with proof in a manner designated by the board that the employee or annuitant and his or her domestic partner have filed a valid Declaration of Domestic Partnership pursuant to Division 2.5 (commencing with Section 297) of the Family Code or have established a valid domestic partnership, as defined by his or her contracting agency in accordance with subdivision (b) of Section 22869.

(b) The employee or annuitant shall also provide a signed statement indicating that the employee or annuitant agrees that he or she may be required to reimburse the employer, their designated health services plan, and the system, for any expenditures made by the employer, their designated health services plan, and the system, for medical claims, processing fees, administrative charges, costs, and attorney's fees on behalf of the domestic partner if any of the submitted documentation is found to be incomplete, inaccurate, or fraudulent.

(c) The employee or annuitant shall notify the employer or the board when a domestic partnership has terminated, as required by subdivision (c) of Section 299 of the Family Code or as required by his or her contracting agency in accordance with subdivision (b) of Section 22869.

CHAPTER 765

An act to amend Section 6068 of the Business and Professions Code, and to amend Section 956.5 of the Evidence Code, relating to attorneys.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 6068 of the Business and Professions Code is amended to read:

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(*l*) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, ''against the attorney'' includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct

complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

SEC. 2. Section 956.5 of the Evidence Code is amended to read:

956.5. There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

SEC. 3. (a) It is the intent of the Legislature that the President of the State Bar shall, upon consultation with the Supreme Court, appoint an advisory task force to study and make recommendations for a rule of professional conduct regarding professional responsibility issues related to the implementation of this act.

(b) The task force should consider the following issues:

(1) Whether an attorney must inform a client or a prospective client about the attorney's discretion to reveal the client's or prospective client's confidential information to the extent that the attorney reasonably believes that the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.

(2) Whether an attorney must attempt to dissuade the client from committing the perceived criminal conduct prior to revealing the client's confidential information, and how those conflicts might be avoided or minimized.

(3) Whether conflict-of-interest issues between the attorney and client arise once the attorney elects to disclose the client's confidential information, and how those conflicts might be avoided or minimized.

(4) Other similar issues that are directly related to the disclosure of confidential information permitted by this act.

(c) Members of the task force shall include the following:

(1) Civil and criminal law practitioners, including criminal defense practitioners.

(2) Representatives from the judicial, executive, and legislative branches.

(3) Representatives from the State Bar Commission for the Revision of the Rules of Professional Conduct and from the State Bar Committee on Professional Responsibility and Conduct.

(4) Public members.

SEC. 4. The provisions of this act shall become operative on July 1, 2004.

CHAPTER 766

An act to amend Sections 7060 and 7060.1 of the Government Code, relating to rental property.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 7060 of the Government Code is amended to read:

7060. (a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease, except for guestrooms or efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety Code, if the residential hotel meets all of the following conditions:

(1) The residential hotel is located in a city and county, or in a city with a population of over 1,000,000.

(2) The residential hotel has a permit of occupancy issued prior to January 1, 1990.

(3) The residential hotel did not send a notice of intent to withdraw the accommodations from rent or lease pursuant to subdivision (a) of Section 7060.4 that was delivered to the public entity prior to January 1, 2004.

(b) For the purposes of this chapter, the following definitions apply:

(1) ''Accommodations'' means either of the following:

(A) The residential rental units in any detached physical structure containing four or more residential rental units.

(B) With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (A).

(2) ''Disabled'' means a person with a disability, as defined in Section 12955.3 of the Government Code.

SEC. 2. Section 7060.1 of the Government Code is amended to read:

7060.1. Notwithstanding Section 7060, nothing in this chapter does any of the following:

(a) Prevents a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommodations for rent or lease in consideration for a direct financial contribution or, with respect to written contracts or agreements entered into prior to July 1, 1986, for any consideration. Any contract or agreement specified in this subdivision is not enforceable against a person who acquires title to the accommodations as a bona fide purchaser for value (or successors in interest thereof), unless (1) the purchaser at the time of acquiring title to the accommodations has actual knowledge of the contract or agreement, or (2) a written memorandum of the contract or agreement which specifically describes the terms thereof and the affected real property, and which identifies the owner of the property, has been recorded with the county recorder prior to July 1, 1986, or not less than 30 days prior to transfer of title to the property to the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

As used in this subdivision, ''direct financial contribution'' includes contributions specified in Section 65916 and any form of interest rate subsidy or tax abatement provided to facilitate the acquisition or development of real property.

(b) Diminishes or enhances, except as specifically provided in Section 7060.2, any power which currently exists or which may hereafter exist in any public entity to grant or deny any entitlement to the use of real property, including, but not limited to, planning, zoning, and subdivision map approvals.

(c) Diminishes or enhances any power in any public entity to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations.

(d) Supersedes any provision of Chapter 16 (commencing with Section 7260) of this division, Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of this code, Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Part 2 (commencing with Section 43) of Division 1 of the Civil Code, Title 5 (commencing with Section 1925) of Part 4 of Division 3 of the Civil Code, Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or Division 24 (commencing with Section 33000) of the Health and Safety Code.

(e) Relieves any party to a lease or rental agreement of the duty to perform any obligation under that lease or rental agreement.

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CHAPTER 767

An act to amend Section 798.71 of, and to add Section 798.74.5 to, the Civil Code, relating to mobilehomes.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 798.71 of the Civil Code is amended to read:

798.71. (a) (1) The management may not show or list for sale a manufactured home or mobilehome without first obtaining the owner's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

(2) Management may require that a homeowner advise management in writing that his or her mobilehome is for sale. If management requires that a homeowner advise management in writing that his or her mobilehome is for sale, failure to comply with this requirement does not invalidate a transfer.

(b) The management shall prohibit neither the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management, nor require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize the management to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

(c) Nothing in this section shall be construed as affecting the provisions of the Health and Safety Code governing the licensing of manufactured home or mobilehome salespersons or dealers.

SEC. 2. Section 798.74.5 is added to the Civil Code, to read:

798.74.5. (a) Within two business days of receiving a request from a prospective homeowner for an application for residency for a specific space within a mobilehome park, if the management has been advised that the mobilehome occupying that space is for sale, the management shall give the prospective homeowner a separate document in at least 12-point type entitled ''INFORMATION FOR PROSPECTIVE HOMEOWNERS,'' which includes the following statements:

''As a prospective homeowner you are being provided with certain information you should know prior to applying for tenancy in a mobilehome park. This is not meant to be a complete list of information.

Owning a home in a mobilehome park incorporates the dual role of ''homeowner'' (the owner of the home) and park resident or tenant (also called a ''homeowner'' in the Mobilehome Residency Law). As a homeowner under the Mobilehome Residency Law, you will be responsible for paying the amount necessary to rent the space for your home, in addition to other fees and charges described below. You must also follow certain rules and regulations to reside in the park.

If you are approved for tenancy, and your tenancy commences within the next 30 days, your beginning monthly rent will be $____ (must be completed by the management) for space number ____ (must be completed by the management). Additional information regarding future rent or fee increases may also be provided.

In addition to the monthly rent, you will be obligated to pay to the park the following additional fees and charges listed below. Other fees or charges may apply depending upon your specific requests. Metered utility charges are based on use.

_____

_____

(Management shall describe the fee or charge and a good faith estimate of each fee or charge.)

Some spaces are governed by an ordinance, rule, regulation, or initiative measure that limits or restricts rents in mobilehome parks. Long-term leases specify rent increases during the term of the lease. By signing a rental agreement or lease for a term of more than one year, you may be removing your rental space from a local rent control ordinance during the term, or any extension, of the lease if a local rent control ordinance is in effect for the area in which the space is located.

A fully executed lease or rental agreement, or a statement signed by the park's management and by you stating that you and the management have agreed to the terms and conditions of a rental agreement, is required to complete the sale or escrow process of the home. You have no rights to tenancy without a properly executed lease or agreement or that statement. (Civil Code Section 798.75)

If the management collects a fee or charge from you in order to obtain a financial report or credit rating, the full amount of the fee or charge will be either credited toward your first month's rent or, if you are rejected for any reason, refunded to you. However, if you are approved by management, but, for whatever reason, you elect not to purchase the mobilehome, the management may retain the fee to defray its administrative costs. (Civil Code Section 798.74)

We encourage you to request from management a copy of the lease or rental agreement, the park's rules and regulations, and a copy of the Mobilehome Residency Law. Upon request, park management will provide you a copy of each document. We urge you to read these documents before making the decision that you want to become a mobilehome park resident.

Dated: _____

Signature of Park Manager: _____

Acknowledge Receipt by Prospective Homeowner: _____"

(b) Management shall provide a prospective homeowner, upon his or her request, with a copy of the rules and regulations of the park and with a copy of this chapter.

(c) This section shall become operative on October 1, 2004.

CHAPTER 768

An act to amend Sections 11104, 12509, 12660, and 12814.6 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 11104 of the Vehicle Code is amended to read:

11104. (a) Every person, in order to qualify as a driving instructor, as defined in Section 310.4, shall meet all of the following requirements:

(1) On and after July 1, 1973, have a high school education or its equivalent and have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Be physically able to safely operate a motor vehicle and to train others in the operation of motor vehicles.

(4) Hold a valid California driver's license in a class appropriate for the type of vehicle in which instruction will be given.

(5) Not be on probation to the department as a negligent operator.

(6) Have a driving record that does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(7) Be 21 years of age or older.

(b) If an applicant cannot meet the requirements of paragraphs (3) and (4) of subdivision (a) because of a physical disability, the department may, at its discretion, issue the applicant a driving school instructor's license restricted to classroom driver education instruction only.

(c) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 2. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years and 6 months and enrolled and participating in an integrated driver education program as provided in subparagraph (B) of paragraph (3) of subdivision (a) of Section 12814.6.

(4) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(5) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for and be issued an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, any person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) Any person while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) Any person while having in his or her immediate possession a valid permit issued pursuant to paragraph (4) of subdivision (a), may only operate a government-owned motor vehicle, other than a motorcycle or a motorized bicycle, when taking the driver training instruction administered by the California National Guard as required by paragraph (2) of subdivision (a) of Section 21814.7.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 3. Section 12660 of the Vehicle Code is amended to read:

12660. (a) The department may establish a program authorizing a driving school licensed under Chapter 1 (commencing with Section 11100) of Division 5 to issue a student license to operate a class 3 vehicle

to any applicant 15 years of age or older, subject to the conditions specified in subdivision (d).

(b) The department may charge any driving school participating in the program a fee not to exceed two dollars ($2) per applicant to recover the department's cost in establishing and monitoring the program. The fee that a participating school may charge an applicant for a student license may not exceed the fee that the department charges the school for the license.

(c) The department may remove a driving school from the program if the department determines that the school has issued a student license fraudulently, or has otherwise not followed the requirements of the program. This fraudulent conduct may result in cause for suspension or revocation of the driving school license.

(d) (1) Applicants shall meet the qualification standards specified in regulations adopted by the department pursuant to Section 12661. The student license application shall be accompanied by a statement signed by the parents or guardian, or person having custody of the minor, consenting to the issuance of a student license to the applicant.

(2) No licensed driving school may issue a student license to any applicant under the age of 17 years and 6 months unless that applicant shows proof of satisfactory completion of an approved course in driver education, pursuant to standards specified in paragraph (4) of subdivision (a) of Section 12814.6.

(e) A driving school owner or an independent instructor licensed under Section 11105.5 shall maintain liability insurance for bodily injury or property damage caused by the use of a motor vehicle in driving instruction, and for the liability of the driving school, the instructor, and the student, in accordance with Section 11103.

(f) The department shall submit a report to the Legislature on the progress of the program established under subdivision (a) within two years after the program is implemented. The report shall include, but not be limited to, an analysis of the costs and benefits of the program and shall include recommendations by the department.

(g) The director may terminate the program at any time the department determines that continued operation of the program would have an adverse effect on traffic safety. The finding upon which the termination is based shall be reported to the Legislature within 30 days following termination of the program.

SEC. 4. Section 12814.6 of the Vehicle Code is amended to read:

12814.6. (a) Except as provided in Section 12814.7, a driver's license issued to a person at least 16 years of age but under 18 years of age shall be issued pursuant to the provisional licensing program contained in this section. The program shall consist of all of the following components:

(1) Upon application for an original license, the applicant shall be issued an instruction permit pursuant to Section 12509. A person who has in his or her immediate possession a valid permit issued pursuant to Section 12509 may operate a motor vehicle, other than a motorcycle or motorized bicycle, only when the person is either taking the driver training instruction referred to in paragraph (3) or practicing that instruction, provided the person is accompanied by, and is under the immediate supervision of, a California licensed driver 25 years of age or older whose driving privilege is not on probation. The age requirement of this paragraph does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor.

(2) The person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license.

(3) The person shall have complied with one of the following:

(A) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(B) Satisfactory completion of an integrated driver education and training program that is approved by the department and conducted by a driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5. The program shall utilize segmented modules, whereby a portion of the educational instruction is provided by, and then reinforced through, specific behind-the-wheel training before moving to the next phase of driver education and training. The program shall contain a minimum of 30 hours of classroom instruction and six hours of behind-the-wheel training.

(C) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 and either an accredited course in automobile driver education in any secondary school of California pursuant to provisions of the Education Code or satisfactory completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, and the standards shall be at least equal to the requirements for driver education and driver training contained in the rules and regulations adopted by the State Board of Education pursuant to the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a school district to comply with subparagraph (A) in order to graduate from high school.

(D) Except as provided under subparagraph (B), a student may not take driver training instruction, unless he or she has successfully completed driver education.

(4) The person shall complete 50 hours of supervised driving practice prior to the issuance of a provisional license, which is in addition to any other driver training instruction required by law. Not less than 10 of the required practice hours shall include driving during darkness, as defined in Section 280. Upon application for a provisional license, the person shall submit to the department the certification of a parent, spouse, guardian, or licensed or certified driving instructor that the applicant has completed the required amount of driving practice and is prepared to take the department's driving test. A person without a parent, spouse, guardian, or who is an emancipated minor, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(5) The person shall successfully complete an examination required by the department. Before retaking a test, the person shall wait for not less than one week after failure of the written test and for not less than two weeks after failure of the driving test.

(b) Except as provided in Section 12814.7, the provisional driver's license shall be subject to all of the following restrictions:

(1) Except as specified in paragraph (3), during the first six months after issuance of a provisional license the licensee may not do any of the following unless accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor:

(A) Drive between the hours of 12 midnight and 5 a.m.

(B) Transport passengers who are under 20 years of age.

(2) During the second six months after issuance of a provisional license the licensee may transport passengers under the age of 20 years between the hours of 5 a.m. and 12 midnight without supervision. This driving time restriction may not modify or alter any local ordinance that restricts or prohibits cruising during specified proscribed hours. However, the restriction imposed under subparagraph (A) of paragraph (1) shall continue to apply during this period.

(3) A licensee may drive between the hours of 12 midnight and 5 a.m. or transport an immediate family member without being accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor, in the following circumstances:

(A) Medical necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed

statement from a physician familiar with the condition, containing a diagnosis and probable date when sufficient recovery will have been made to terminate the necessity.

(B) Schooling or school-authorized activities of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed.

(C) Employment necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed.

(D) Necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member. The licensee shall keep in his or her possession a signed statement from a parent or legal guardian verifying the reason and containing a probable date that the necessity will have ceased.

(E) The licensee is an emancipated minor.

(c) A law enforcement officer may not stop a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions imposed under subdivision (b).

(d) (1) Upon a finding that any licensee has violated paragraph (1) or (2) of subdivision (b), the court shall impose one of the following:

(A) Not less than eight hours nor more than 16 hours of community service for a first offense and not less than 16 hours nor more than 24 hours of community service for a second or subsequent offense.

(B) A fine of not more than thirty-five dollars ($35) for a first offense and a fine of not more than fifty dollars ($50) for a second or subsequent offense.

(2) If the court orders community service, the court shall retain jurisdiction until the hours of community service have been completed.

(3) If the hours of community service have not been completed within 90 days, the court shall impose a fine of not more than thirty-five dollars ($35) for a first offense and not more than fifty dollars ($50) for a second or subsequent offense.

(e) A conviction of paragraph (1) or (2) of subdivision (b), when reported to the department, may not be disclosed as otherwise specified

in Section 1808 or constitute a violation point count value pursuant to Section 12810.

(f) Any term of restriction or suspension of the driving privilege imposed on a person pursuant to this subdivision shall remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(1) The driving privilege shall be suspended when the record of the person shows one or more notifications issued pursuant to Section 40509 or 40509.5. The suspension shall continue until any notification issued pursuant to Section 40509 or 40509.5 has been cleared.

(2) A 30-day restriction shall be imposed when a driver's record shows a violation point count of two or more points in 12 months, as determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class M vehicle, or so licensed, with no passengers aboard.

(3) A six-month suspension of the driving privilege and a one-year term of probation shall be imposed whenever a licensee's record shows a violation point count of three or more points in 12 months, as determined in accordance with Section 12810. The terms and conditions of probation shall include, but not be limited to, both of the following:

(A) The person shall violate no law which, if resulting in conviction, is reportable to the department under Section 1803.

(B) The person shall remain free from accident responsibility.

(g) Whenever action by the department under subdivision (f) arises as a result of a motor vehicle accident, the person may, in writing and within 10 days, demand a hearing to present evidence that he or she was not responsible for the accident upon which the action is based. Whenever action by the department is based upon a conviction reportable to the department under Section 1803, the person has no right to a hearing pursuant to Article 3 (commencing with Section 14100) of Chapter 3.

(h) The department shall require a person whose driving privilege is suspended or revoked pursuant to subdivision (f) to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following the date of reinstatement.

(i) (1) Notwithstanding any other provision of this code, the department may issue a distinctive driver's license, that displays a distinctive color or a distinctively colored stripe or other distinguishing characteristic, to persons at least 16 years of age and older but under 18 years of age, and to persons 18 years of age and older but under 21 years

of age, so that the distinctive license feature is immediately recognizable. The features shall clearly differentiate between drivers' licenses issued to persons at least 16 years of age or older but under 18 years of age and to persons 18 years of age or older but under 21 years of age.

(2) If changes in the format or appearance of drivers' licenses are adopted pursuant to this subdivision, those changes may be implemented under any new contract for the production of drivers' licenses entered into after the adoption of those changes.

(j) The department shall include, on the face of the provisional driver's license, the original issuance date of the provisional driver's license in addition to any other issuance date.

(k) This section shall be known and may be cited as the Brady-Jared Teen Driver Safety Act of 1997.

CHAPTER 769

An act relating to the Ravenswood City Elementary School District, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. The Legislature finds and declares that because of the fiscal emergency in which the Ravenswood City Elementary School District finds itself, due to costs incurred in complying with a court-ordered corrective action plan, it is necessary to reappropriate federal funds that were received by the state for the support of special education and appropriated in the Budget Act of 2002, for apportionment by the Superintendent of Public Instruction to the Ravenswood City Elementary School District.

SEC. 2. Notwithstanding any other provision of law, the sum of one million three hundred thirty-three thousand seven hundred forty dollars ($1,333,740) of federal funds received by the state for the support of special education and appropriated in the Budget Act of 2002, is hereby reappropriated for apportionment by the Superintendent of Public Instruction to the Ravenswood City Elementary School District. The Ravenswood City Elementary School District shall use moneys apportioned pursuant to this section exclusively for the support of special education as permitted under federal law.

SEC. 3. The Legislature finds and declares that due to unique circumstances relating to the fiscal emergency in the Ravenswood City Elementary School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 770

An act to add Section 16724.4 to the Government Code, relating to bonds.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 16724.4 is added to the Government Code, to read:

16724.4. Any state bond measure approved by the voters on or after January 1, 2004, shall be subject to an annual reporting process, as follows:

(a) The head of the lead state agency administering the bond proceeds shall report to the Legislature and the Department of Finance no later than January 1, 2005, or the January 1 of the second year following the enactment of the bond measure, whichever is later, and at least once a year thereafter. The annual report shall contain all of the following:

(1) A list of all projects and their geographical location that have been funded or are required or authorized to receive funds.

(2) The amount of funds allocated on each project.

(3) The status of any project required or authorized to be funded.

(b) Costs of the report may be included in the cost of administering the bond measure unless the measure specifically prohibits those expenses.

CHAPTER 771

An act to amend Section 25664 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Alcohol is often a factor in motor vehicle accidents, homicides, and suicides, which are the three leading causes of death among youth between the ages of 10 and 24 years.

(b) California's close proximity to Mexico presents a challenge in preventing underage drinking because Mexico's legal drinking age differs from that in California.

(c) Establishments located in Mexico have targeted the youth population in the United States, through the use of marketing techniques, to encourage patronage at their bars and nightclubs.

(d) Unfortunately, many times the marketing techniques of these Mexican establishments are successful; federally funded studies have confirmed that young people exposed to alcohol-related advertising are more likely to consume alcohol.

(e) Because the consumption of alcohol among those under the age of 21 years creates a significant health and safety risk, California has a substantial interest in engaging in efforts to reduce underage drinking.

SEC. 2. It is the intent of the Legislature, in enacting this act, to prohibit, in California, advertising promoting the consumption of alcohol outside the United States that is aimed at individuals under the age of 21 years by establishments that sell alcoholic beverages as one of an establishment's principal business activities.

SEC. 3. Section 25664 of the Business and Professions Code is amended to read:

25664. (a) (1) The use, in any advertisement of alcoholic beverages, of any subject matter, language, or slogan addressed to and intended to encourage minors to drink the alcoholic beverages, is prohibited.

(2) Signage or flyers advertising an establishment that serves alcoholic beverages to individuals under the age of 21 years are prohibited under paragraph (1) if one of the establishment's principal business activities is the selling of alcoholic beverages, and the advertisement expressly states that the jurisdiction in which the establishment is located has a legal drinking age of under 21 years or that individuals under the age of 21 years may patronize the establishment.

(3) Nothing in this section shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.

(b) The department may adopt rules as it determines to be necessary for the administration of this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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 772

An act to amend Sections 54220 and 54222 of the Government Code, relating to surplus land.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 54220 of the Government Code is amended to read:

54220. (a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

(b) The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

(c) The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living elsewhere. The Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, mixed-use development near major transit stations.

SEC. 2. Section 54222 of the Government Code is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.

(d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(e) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994, Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7 shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.

(f) A written offer to sell or lease any surplus property in a designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent.

(g) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

CHAPTER 773

An act to amend Section 51700 of, to amend, repeal, and add Sections 60640 and 60642 of, and to add Sections 51701 and 51701.5 to, the Education Code, relating to schools.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 51700 of the Education Code is amended to read:

51700. (a) There is hereby established the Reading First Plan to provide reading instruction to pupils in kindergarten and grades 1 to 3, inclusive, and to special education pupils in kindergarten and grades 1 to 12, inclusive.

(b) The plan shall be administered by the State Department of Education and shall be funded from moneys allocated pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(c) The Reading First Plan submitted to the Secretary of Education pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall do all of the following:

(1) (A) Authorize a local educational agency that meets all the requirements of Section 6362(c)(6) of Title 20 of the United States Code to be eligible for Reading First funding if pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, are provided with standards-aligned textbooks or basic instructional materials aligned with the reading/language arts content standards pursuant to Section 60605 by the beginning of the first school term that commences no later than 24 months after those materials are adopted by the State Board of Education.

(B) Notwithstanding subparagraph (A), a class operating pursuant to Section 310 may use primary language materials in alternate formats

adopted by the State Board of Education for purposes of participating in a program funded pursuant to this article.

(2) Authorize a local educational agency to use scientifically based reading research supplemental instructional materials for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, that are aligned with the reading/language arts content standards adopted pursuant to Section 60605. The local educational agency shall provide an explanation in its application of how its use of these supplemental instructional materials support the reading/language arts instructional materials adopted by the State Board of Education for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive.

(3) Authorize an eligible local educational agency to receive a grant in the amount of up to six thousand five hundred dollars ($6,500) per teacher in kindergarten or in any of grades 1 to 3, inclusive, unless otherwise required pursuant to Section 6362(c)(2)(A) of Title 20 of the United States Code. In addition, to the extent that a local educational agency needs additional funding consistent with the maximum amount allowable under the federal No Child Left Behind Act (20 U.S.C. Sec. 6301 et. seq.), authorize the local educational agency to submit a plan justifying that need to the State Department of Education and the Department of Finance for their joint approval. A grant awarded pursuant to this paragraph shall be used to enhance reading instruction, including, but not limited to, the following purposes:

(A) Purchasing and implementing scientifically based reading research instructional and supplemental materials in reading language arts, pursuant to requirements specified in the Reading First Plan and paragraph (2).

(B) Participating in professional development in reading and language arts, pursuant to requirements specified in the Reading First Plan. A Reading First funded agency may not claim funding for teachers of kindergarten or any of grades 1 to 3, inclusive, or teachers of special education pupils for the Mathematics and Reading Professional Development Program established pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

(C) Hiring reading coaches or reading content experts, or both.

(D) Purchasing reading and language arts assessments.

(E) Other purposes, as specified in Section 6362(c)(7) of Title 20 of the United States Code.

(d) The State Department of Education and the State Board of Education may not develop or implement requirements or criteria that make a local educational agency ineligible for funding pursuant to this section because the local educational agency provides primary language

instruction and comprehensive English language development instruction to English learners in alternative classrooms, as authorized pursuant to Sections 310 and 311.

(e) A local educational agency shall submit an expenditure plan as part of its Reading First application that includes details about how it is going to use its funding.

SEC. 2. Section 51701 is added to the Education Code, to read:

51701. The State Board of Education shall amend California's Reading First Plan to do all of the following:

(a) Authorize a local educational agency operating a program pursuant to Section 310 to apply for funding under Title 1 of the federal No Child Left Behind Act of 2001 (U.S.C. Sec. 6301 et seq.).

(b) Specify that first priority for the allocation of increased Reading First funds available during the 2003–04 fiscal year be given to classrooms that meet all of the following criteria:

(1) Have not received funding under the Reading First Plan.

(2) Operate programs pursuant to Section 310.

(3) Are located in previously approved Reading First local educational agencies.

(c) Specify that second priority for the allocation of increased Reading First funds available during the 2003–04 fiscal year be given to local educational agencies that operate programs pursuant to Section 310 and that meet other program requirements, as detailed in the revised Reading First Plan.

(d) Provide a process whereby professional development providers that have expertise in addressing the needs of classrooms operating pursuant to Section 310 and using alternate formats adopted by the State Board of Education will be approved as Reading First providers.

SEC. 3. Section 51701.5 is added to the Education Code, to read:

51701.5. The State Board of Education shall determine if a demand exists for scientifically based instructional materials that are aligned with the reading/language arts content standards pursuant to Section 60605 for languages other than Spanish and English in classrooms operating pursuant to Section 310 that apply for Reading First funds. If a demand exists, the State Board of Education shall explore ways to meet that demand, including, but not limited to, alternate format adoptions.

SEC. 4. Section 60640 of the Education Code is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Each fiscal year, from the funds available for this purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the achievement test designated by the State Board of Education pursuant to Section 60642 and the standards-based achievement test provided for

in Section 60642.5. The State Board of Education shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the State Board of Education in subdivision (b).

(d) The governing board of the school district may administer achievement tests in kindergarten and grade 1 or 12, or both, as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) At the school district's option, pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. Notwithstanding any other law, the State Board of Education shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, no later than November 14, 1998, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(g) Pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, shall be required to take a test in their primary language if a test is available, if fewer than 12 months have elapsed after their initial enrollment in any public school in the state.

(h) (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (f), and (g).

(2) The State Board of Education shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the Budget Act

and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202, for the applicable 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, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) This section shall remain in effect only until June 30, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2004, deletes or extends that date.

SEC. 5. Section 60640 is added to the Education Code, to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2004–05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 8 the achievement test designated

by the State Board of Education pursuant to Section 60642 and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The State Board of Education shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the State Board of Education in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) At the option of the school district, a pupil with limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. Notwithstanding any other law, the State Board of Education shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(g) A pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, shall be required to take a test in their primary language if a test is available, if fewer than 12 months have elapsed after their initial enrollment in any public school in the state.

(h) (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (f), and (g).

(2) The State Board of Education shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be

determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202, for the applicable 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, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) This section shall become operative July 1, 2004.

SEC. 6. Section 60642 of the Education Code is amended to read:

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

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

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

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

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

(f) This section shall remain in effect only until June 30, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2004, deletes or extends that date.

SEC. 7. Section 60642 is added to the Education Code, to read:

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

(b) Based upon a review of the achievement tests submitted and the recommendation made by the Superintendent of Public Instruction pursuant to subdivision (b) of Section 60605, the State Board of Education, in its sole discretion, based on the considerations set forth in Section 60644, shall designate for use as part of the STAR Program a single test in grades 3 and 8.

(c) The State Board of Education shall ensure that the achievement test designated pursuant to subdivision (b) contains the subject areas specified in subdivision (c) of Section 60603 for grades 3 and 8.

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

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

(f) This section shall become operative on July 1, 2004.

SEC. 8. The funds appropriated pursuant to Provision 2 of Item 6110-126-0890 of Section 2.00 of the Budget Act of 2003 may not be allocated unless the State Board of Education amends the Reading First Plan pursuant to Section 2 of this act and submits the plan to federal authorities by February 1, 2004, and the federal Secretary of Education approves the plan.

CHAPTER 774

An act to add Section 1353.6 to the Civil Code, relating to common interest developments.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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 provide for all of the following:

(a) That homeowners throughout the state shall be able to engage in constitutionally protected free speech traditionally associated with private residential property.

(b) That owners of a separate interest in a common interest development shall be specifically protected from unreasonable restrictions on this right in the governing documents.

SEC. 2. Section 1353.6 is added to the Civil Code, to read:

1353.6. (a) The governing documents, including the operating rules, may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner's separate interest, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.

(b) For purposes of this section, a noncommercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate interest, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

(c) An association may prohibit noncommercial signs and posters that are more than 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size.

CHAPTER 775

An act to amend Sections 9855 and 9855.2 of the Business and Professions Code, relating to service contracts.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) (1) ''Service contract'' means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a set or appliance, as defined by this chapter, or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling.

(2) Incidental payment of indemnity under paragraph (1) shall not exceed a retail value of two hundred fifty dollars ($250) per year.

(b) ''Service contract administrator'' or ''administrator'' means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract.

(c) ''Service contract seller'' or ''seller'' means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(d) ''Service contractholder'' means a person who purchases or receives a service contract from a service contract seller.

(e) ''Service contractor'' means a service contract administrator or a service contract seller.

(f) ''Service contract reimbursement insurance policy'' means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) ''Obligor'' is the entity financially and legally obligated under the terms of a service contract.

(h) The terms ''consumer goods,'' ''manufacturer,'' ''retail seller,'' ''retailer,'' and ''sale'' shall have the same meanings ascribed to them in Section 1791 of the Civil Code.

SEC. 2. Section 9855.2 of the Business and Professions Code is amended to read:

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless he or she complies with one of the following requirements:

(1) Files with the director one of the following:

(A) The most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

(B) The most recent audited financial statement reflecting a net worth of not less than one hundred million dollars ($100,000,000). The financial statement shall be certified by a certified public accountant who is licensed in the state where the service contract seller maintains its principal place of business or the seller's state of domestic incorporation.

(2) Obtains a service contract reimbursement insurance policy.

(3) Sells service contracts that are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller's service contracts.

(4) Maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

(b) A service contract administrator shall not administer service contracts sold in this state unless a service contract reimbursement insurance policy covering these service contracts has been obtained.

CHAPTER 776

An act to amend Section 50801.5 of the Health and Safety Code, relating to veterans.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) It is estimated that veterans constitute nearly 30 percent of California's homeless adult population.

(b) According to the United States Department of Veterans Affairs, veterans are twice as likely to become homeless as nonveterans. Women veterans are four times as like as nonveteran women to become homeless.

(c) In its October 2002 report, ''A Study on the Status of Homeless Veterans in California,'' the California Department of Veterans Affairs estimated that up to 55,000 veterans are homeless on any given day in California, 27,000 in Los Angeles alone.

(d) There are less than 2,500 shelter and transitional beds specifically available for homeless veterans in California.

(e) Homeless veterans experience multiple barriers to employment, including long-term homelessness, unemployment, underemployment, higher rates of hepatitis C, higher rates of adult onset diabetes, physical and mental disability, posttraumatic stress disorder, and substance abuse issues.

(f) Over 80 percent of homeless veterans who receive housing and support services from veteran-specific programs successfully avoid future homelessness.

SEC. 2. 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 any of the following:

(1) Sex.

(2) 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.

(3) Military veteran status, if the veterans served possess significant barriers to social reintegration and employment due to a physical or mental disability, substance abuse, or the effects of long-term homelessness that require specialized treatment and services and the provider of emergency shelter or transitional housing also provides the specialized treatment and services.

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 777

An act to add Sections 2247 and 2960.2 to the Business and Professions Code, to amend, repeal, and add Section 1031 of the Government Code, and to add Section 832.05 to the Penal Code, relating to peace officers.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 2247 is added to the Business and Professions Code, to read:

2247. (a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

SEC. 2. Section 2960.2 is added to the Business and Professions Code, to read:

2960.2. (a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

SEC. 3. Section 1031 of the Government Code is amended to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose any criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test indicating high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year or four-year degree from an accredited college or university.

The high school shall be either a United States public school meeting the high school standards set by the state in which it is located, an accredited United States Department of Defense high school, or an accredited nonpublic high school. Any accreditation required by this paragraph shall be from an accrediting association recognized by the Secretary of the United States Department of Education. This subdivision shall not apply to any public officer or employee who was employed, prior to the effective date of the amendment of this section made at the 1971 Regular Session of the Legislature, in any position declared by law prior to the effective date of that amendment to be peace officer positions.

(f) Be found to be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer. Physical condition shall be evaluated by a licensed physician and surgeon. Emotional and mental condition shall be evaluated by a licensed physician and surgeon or by 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.

This section shall not be construed to preclude the adoption of additional or higher standards, including age.

(g) This section shall become inoperative on January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 1031 is added to the Government Code, to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test indicating high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year or four-year degree from an accredited college or university. The high school shall be either a United States public school meeting the high school standards set by the state in which it is located, an accredited United States Department of Defense high school, or an accredited nonpublic high school. Any accreditation required by this paragraph shall be from an accrediting association recognized by the Secretary of

the United States Department of Education. This subdivision shall not apply to a public officer or employee who was employed, prior to the effective date of the amendment of this section made at the 1971 Regular Session of the Legislature, in any position declared by law prior to the effective date of that amendment to be peace officer positions.

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

(1) Physical condition shall be evaluated by a licensed physician and surgeon.

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate.

The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

(g) This section shall not be construed to preclude the adoption of additional or higher standards, including age.

(h) This section shall become operative on January 1, 2005.

SEC. 5. Section 832.05 is added to the Penal Code, to read:

832.05. (a) Each state or local department or agency that employs peace officers shall utilize a person meeting the requirements set forth in subdivision (f) of Section 1031 of the Government Code, applicable to emotional and mental examinations, for any emotional and mental evaluation done in the course of the department or agency's screening of peace officer recruits or the evaluation of peace officers to determine their fitness for duty.

(b) This section shall become operative on January 1, 2005.

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 778

An act to amend Section 87407 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 87407 of the Government Code is amended to read:

87407. No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

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

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 779

An act to amend Sections 17590, 17591, 17592, 17593, and 17594 of, and to repeal Section 17595 of, the Business and Professions Code, relating to telephone solicitations.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 17590 of the Business and Professions Code is amended to read:

17590. (a) There is a compelling state interest to protect the privacy of residential or wireless telephone subscribers who wish to avoid unsolicited and unwanted telephone solicitations. For the purposes of this article, a residential or wireless telephone subscriber shall be referred to as a subscriber.

(b) The act of becoming a subscriber should not undermine or lessen a person's right of privacy as guaranteed under Section 1 of Article I of the California Constitution.

(c) Congress has passed and the President has signed the ''Do-Not-Call Implementation Act'' (H.R. 395) which authorizes the Federal Trade Commission (FTC) to implement and enforce a national ''do not call'' registry. The FTC has decided to create as part of the federal Telemarketing Sales Rule (16 C.F.R. 310) a single nationwide Do Not Call Registry (16 C.F.R. 310.4 (b)(1)(iii)(B)), which is anticipated to be fully implemented by the late fall of 2003. Thus, it is the intent of the Legislature to adopt the California telephone numbers on the national ''do not call'' registry as the California ''do not call'' registry. Doing so will have many benefits for California residents and businesses. For instance, it is free for consumers to register on the national registry; California residents will only have to register on one registry, instead of two; registration on the national registry is only required once every five years; and businesses affected by the law will only be required to purchase one registry, instead of two. Additionally, adopting the California telephone numbers on the national ''do not call'' registry as the California ''do not call'' registry will mean that California does not have to set up its own administrative system to develop and maintain a California only ''do not call'' registry, thus saving California tax payers millions of dollars.

SEC. 2. Section 17591 of the Business and Professions Code is amended to read:

17591. It is unlawful for any person to do any of the following: using the ''do not call'' list for any purpose other than to comply with this

article or applicable federal laws; denying or interfering in any way, directly or indirectly, with a subscriber's right to place a California telephone number on the ''do not call'' list; 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; charging a fee to place a California telephone number on 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 17592 of the Business and Professions Code is amended to read:

17592. (a) For purposes of this article:

(1) A ''telephone solicitor'' means any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number that does any of the following:

(A) Seeks to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(B) Offers or solicits or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(C) Seeks marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(D) Seeks to sell or promote any investment, insurance, or financial services.

(E) Seeks to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

(2) ''Do not call'' list means the California telephone numbers on the national ''do not call'' registry established and maintained by the Federal Trade Commission, as described in Section 310.4(b)(1)(iii)(B) of Title 16 of the Code of Federal Regulations. A ''do not call'' list is current if it was obtained from the Federal Trade Commission no more than three months prior to the date a call is made.

(b) A person or entity does not necessarily qualify as a telephone solicitor if the products or services of the person or entity are sold or marketed by an independent contractor whose business practices are not controlled by the person or entity.

(c) Except for telephone calls described in subdivision (e), beginning on the 31st day after the Federal Trade Commission makes its first ''do not call'' list available to telephone solicitors, no telephone solicitor

shall call any telephone number on the then current ''do not call'' list and do any of the following:

(1) Seek to offer a prize or to rent, sell, exchange, promote, gift, or lease goods or services or documents that can be used to obtain goods or services.

(2) Offer or solicit or seeks to offer or solicit any extension of credit for personal, family, or household purposes.

(3) Seek marketing information that will or may be used for the direct solicitation of a sale of goods or services to the subscriber.

(4) Seek to sell or promote any investment, insurance, or financial services.

(5) Seek to make any telephone solicitation or attempted telephone solicitation as described in Section 17511.1.

(d) No person or entity that sells, leases, exchanges, or rents telephone solicitation lists shall include in those lists those telephone numbers that appear on the current ''do not call'' list, except that this subdivision does not apply to lists used for directory assistance and numbers published in telephone directories that list substantially all publicly available telephone numbers in a specific geographic area.

(e) Subdivision (c) shall not apply to any of the following:

(1) Telephone calls made pursuant to the express agreement, in writing, of the subscriber to place calls to that California telephone number. This written agreement shall clearly evidence the person's authorization that calls made by or on behalf of a specific party may be placed to that California telephone number, and shall include the signature of that person. In any dispute regarding whether a subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the subscriber has provided this permission by producing the original or a facsimile document, signed by the subscriber, evidencing that permission; or an advertisement by the subscriber. ''Express agreement'' does not include any consent or permission included in any contract of adhesion.

(2) Telephone calls made pursuant to the express request of the subscriber. ''Express request'' may include a telephone call from a person or entity who has been provided the subscriber's telephone number and name as a referral from a solicitor with which the subscriber has an established business relationship, if that solicitor has obtained the subscriber's express request for the referral. ''Express request'' does not include any consent or permission included in any contract of adhesion. A telephone call is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:

(A) The call is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.

(B) The call is made 30 business days after the last date on which the subscriber consented to be contacted.

(C) The call is made after the subscriber has requested that no further telephone calls be made to him or her.

(D) The call is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available.

(3) Telephone calls made in connection with the collection of a debt or the offer by a creditor to the subscriber of an extension of credit to pay a delinquent obligation owed by the subscriber to that creditor.

(4) Telephone calls made to a subscriber if the telephone solicitor has an established business relationship with the subscriber. As used in this article, ''established business relationship'' means a relationship between a seller and a subscriber based on the subscriber's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the 18 months immediately preceding the date of a telemarketing call. If a subscriber purchases or obtains a product or service through a licensed agent or broker, for purposes of this article an established business relationship is created with the licensed agent or broker individually, apart from and in addition to, any established business relationship that may have been created by a licensed agent or broker acting on behalf of another, and the licensed agent or broker is a telephone solicitor, as defined in subdivision (a). Notwithstanding the provisions of this paragraph, an established business relationship does not exist between the subscriber and any separate legal entity associated with the telephone solicitor not acting as an agent or vendor on behalf of the telephone solicitor, as defined in subdivision (a), unless the separate legal entity shares the brand name of a business with which the subscriber has an otherwise established business relationship. If the subscriber instructs the telephone solicitor to place the subscriber on the telephone solicitor's list pursuant to Section 64.1200 of Title 47 of the Code of Federal Regulations and Section 310.4(b)(iii)(A) of Title 16 of the Code of Federal Regulations, that instruction shall be binding on the entity with which the subscriber has the established business relationship, with any entity that has the shared brand name, and all other entities that share that brand name, none of whom may initiate further telephone solicitation calls to that subscriber. Separate legal entities include, but are not limited to, any parent company or entity, any subsidiary company or entity, any partnership or copartner, any joint venture or venturer, association member, or comember, or any affiliated company or entity.

(5) Telephone calls made by an individual businessperson or a small business if the individual businessperson or small business employs no

more than five full- or part-time employees or independent contractors, the individual businessperson or a principal of the small business makes the telephone calls himself or herself for the sale of goods or services offered by that individual businessperson or small business, and the telephone calls are made to subscribers within a 50-mile radius of the location of the individual businessperson or small business. For purposes of this section, the services offered by the individual businessperson or small business cannot be telemarketing services. For purposes of this section, those independent contractors and employees with whom an individual businessperson or a small business is required to have a written independent contractor or employment agreement pursuant to a regulatory scheme to ensure regulatory accountability of those independent contractors or employees, are not counted against the total referenced above.

(6) A telephone call made solely to verify that a subscriber, and not an unauthorized third party, has terminated an established business relationship.

(7) Telephone calls made by a tax-exempt charitable organization.

(8) A telephone call made for the purpose of soliciting a donation without the purchase of goods or services.

(f) Nothing in this section prohibits a telephone solicitor from contacting by mail a subscriber whose telephone number appears on the ''do not call'' list to obtain the subscriber's express written permission allowing the telephone solicitor to make the calls described in subdivision (c). In any dispute regarding whether a subscriber has provided this express written permission, the telephone solicitor has the burden of proving that the subscriber has provided this permission by producing the original or a facsimile document, signed by the subscriber, evidencing that permission.

SEC. 4. Section 17593 of the Business and Professions Code is amended to read:

17593. (a) The Attorney General, a district attorney, or a city attorney may bring a civil action in any court of competent jurisdiction against a telephone solicitor to enforce the article and to obtain any one or more of the following remedies:

(1) An order to enjoin the violation.

(2) A civil penalty of up to the penalty amount that the Federal Trade Commission may seek pursuant to 15 U.S.C. Sec. 45(m)(1)(A) as specified in 16 C.F.R. 1.98.

(3) Any other relief that the court deems proper.

(b) Any person who has received a telephone solicitation that is prohibited by Section 17592, or whose telephone number was used in violation of subdivision (f) of Section 17591, may bring a civil action in small claims court for an injunction or order to prevent further

violations. If a person obtains an injunction or order under this subdivision and service of the injunction or order is properly effected, a person who thereafter receives further solicitations in violation of the injunction or order within 30 days after service of the initial injunction or order, may file a subsequent action in small claims court seeking enforcement of the injunction or order and a civil penalty to be awarded to the person in an amount up to one thousand dollars ($1,000). For purposes of this subdivision, a person's claims may not be aggregated to establish jurisdiction in a court other than small claims court. For purposes of this subdivision, a defendant is not required to personally appear, but may appear by affidavit or by written instrument.

(c) The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under other laws.

(d) It shall be an affirmative defense to any action brought under this article that the violation was accidental and in violation of the telephone solicitor's policies and procedures and telemarketer instruction and training.

SEC. 5. Section 17594 of the Business and Professions Code is amended to read:

17594. Any information regarding any California telephone number which appears on the ''do not call'' list in the possession of the Attorney General, whether obtained from the Federal Trade Commission or submitted to the Attorney General by a subscriber for inclusion in the ''do not call'' list, shall not be disclosed pursuant to a request made under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall also be privileged under Section 1040 of the Evidence Code. Notwithstanding the foregoing, nothing in this section prevents the Attorney General from providing a certificate stating whether a specific telephone number was on the ''do not call'' list that was effective on the specified date or range of dates in response to:

(a) An inquiry from any law enforcement agency that is investigating, prosecuting, or responding to an allegation of a violation of this article.

(b) An inquiry from an individual who is investigating or litigating an alleged violation of this article and who seeks the certificate regarding his or her telephone number or to an inquiry from the person who is responding to the allegation.

SEC. 6. Section 17595 of the Business and Professions Code is repealed.

SEC. 7. 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 780

An act to amend Section 31780.2 of the Government Code, relating to county employees' retirement.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 31780.2 of the Government Code is amended to read:

31780.2. (a) Any benefits accorded to a spouse pursuant to this article and Article 11 (commencing with Section 31760), Article 15.5 (commencing with Section 31841), Article 15.6 (commencing with Section 31855), and Article 16 (commencing with Section 31861), or any of them, may be accorded to a domestic partner, as defined in Section 297 of the Family Code, who is registered with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code. The county may also require the member and the member's domestic partner to have a current Affidavit of Domestic Partnership, in the form adopted by the county board of supervisors, on file with the county for at least one year prior to the member's retirement or death prior to retirement.

(b) If a member described in subdivision (a) has a surviving dependent child, the surviving dependent child shall receive the death and survivor's allowance until 18 years of age or until married, whichever occurs earlier, or until 22 years of age if enrolled as a full-time student in an accredited educational institution. When the member's surviving dependent child reaches 18 years of age or is no longer a dependent, whichever occurs earlier, or reaches 22 years of age if enrolled as a full-time student in an accredited educational institution, then the benefits accorded to a spouse, as specified in subdivision (a), may be accorded to a domestic partner pursuant to this section. However, if a surviving dependent child elects to receive a lump-sum payment, the lump-sum payment shall be shared among any surviving dependent children and the domestic partner, pursuant to this section, in a proportional manner.

(c) This section is not operative unless and until the county board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county. In a county of the 10th class, as defined in Sections 28020 and 28031, the county board of supervisors may implement the benefits described in this section as determined through the collective bargaining process and based on actuarial cost estimates.

CHAPTER 781

An act to amend Section 53084 of the Government Code, and to amend Section 33426.7 of the Health and Safety Code, relating to local government.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 53084 of the Government Code is amended to read:

53084. (a) Notwithstanding any other provision of this part, a local agency shall not provide any form of financial assistance to a vehicle dealer or big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency but within the same market area.

(b) As used in this section:

(1) ''Big box retailer'' means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).

(2) ''Local agency'' means a chartered or general law city, a chartered or general law county, or a city and county. ''Local agency'' does not include a redevelopment agency that is subject to Section 33426.7 of the Health and Safety Code.

(3) ''Financial assistance'' includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the vehicle dealer or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A) ''Market area'' means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific vehicle dealer or the specific big box retailer that is relocating.

(B) With respect to a vehicle dealer, a ''market area'' shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the vehicle dealer is relocating and ending at the location to which the vehicle dealer is relocating.

(C) With respect to a big box retailer, a ''market area'' shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) ''Relocating'' means the closing of a vehicle dealer or big box retailer in one location and the opening of a vehicle dealer or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the vehicle dealer or big box retailer that has closed or will close and the one that is opening. ''Relocating'' does not mean and shall not include the closing of a vehicle dealer or big box retailer because the vehicle dealer or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(6) ''Vehicle dealer'' means a retailer that is also a dealer as defined by Section 285 of the Vehicle Code.

(c) This section does not apply to local agency assistance in the construction of public improvements that serve all or a portion of the jurisdiction of the local agency and that are not required to be constructed as a condition of approval of the vehicle dealer or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the vehicle dealer or big box retailer.

(d) This section shall not apply to any financial assistance provided by a local agency pursuant to a lease, contract, agreement, or other enforceable written instrument entered into between the local agency and a vehicle dealer, big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, if the lease, contract, agreement, or other enforceable written instrument was entered into prior to December 31, 1999.

SEC. 2. Section 33426.7 of the Health and Safety Code is amended to read:

33426.7. (a) Notwithstanding any other provision of this part, a redevelopment agency shall not provide any form of financial assistance to a vehicle dealer or big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, that is relocating from the territorial jurisdiction of one community to the territorial jurisdiction of another community but within the same market area.

(b) As used in this section:

(1) ''Big box retailer'' means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).

(2) ''Community'' and ''territorial jurisdiction'' have the meanings specified in Sections 33002 and 33120, respectively.

(3) ''Financial assistance'' includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the vehicle dealer or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A) ''Market area'' means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific vehicle dealer or the specific big box retailer that is relocating.

(B) With respect to a vehicle dealer, a ''market area'' shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the vehicle dealer is relocating and ending at the location to which the vehicle dealer is relocating.

(C) With respect to a big box retailer, a ''market area'' shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) ''Relocating'' means the closing of a vehicle dealer or big box retailer in one location and the opening of a vehicle dealer or big box

retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the vehicle dealer or big box retailer that has closed or will close and the one that is opening. ''Relocating'' does not mean and shall not include the closing of a vehicle dealer or big box retailer because the vehicle dealer or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(6) ''Vehicle dealer'' means a retailer that is also a dealer as defined by Section 285 of the Vehicle Code.

(c) This section does not apply to agency assistance in the construction of public improvements that serve all or a portion of a project area and that are not required to be constructed as a condition of approval of the vehicle dealer or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the vehicle dealer or big box retailer.

(d) This section shall not apply to any financial assistance provided by a redevelopment agency pursuant to a lease, contract, agreement, or other enforceable written instrument entered into between the redevelopment agency and a vehicle dealer, big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, if the lease, contract, agreement, or other enforceable written instrument was entered into prior to December 31, 1999.

SEC. 3. The Legislature finds and declares that in enacting this act to add paragraph (6) to subdivision (b) of Section 53084 of the Government Code, and to add paragraph (6) to subdivision (b) of Section 33426.7 of the Health and Safety Code, it is the intent of the Legislature to clarify the intended use of the term ''automobile dealership'' as contained in Chapter 462 of the Statutes of 1999, and that the addition of those provisions does not constitute a change in, but is declaratory of, existing law.

SEC. 4. Nothing in this act shall impair or in any way affect a contract containing the terms specified in either subdivision (c) of Section 53084 of the Government Code or subdivision (c) of Section 33426.7 of the Health and Safety Code as those provisions read before the effective date of this act.

CHAPTER 782

An act to amend Section 52052.5 of the Education Code, relating to pupil testing.

[Approved by Governor October 10, 2003. Filed with
Secretary of State October 11, 2003.]

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

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Promote good data management practices with respect to pupil data systems and issues including, ensuring confidentiality, producing analyzable files for approved users, and linking pupil data with data from other agencies and users, including a mechanism to monitor pupil progress in postsecondary education.

(b) Provide for data management and data sharing that is conducted in a manner so as to protect individual pupil data. Specifically, the systems should use unique identifiers that cannot be traced to the pupil's identity.

(c) Establish state data management practices that require the development of specific categories of users and uses for pupil data and establish responsibility for approving and servicing users, as well as, responsibility for establishing and posting protocols, criteria, and procedures for use that are developed in a manner consistent with recommendations of the State Department of Education's advisory committee on privacy and data protocol. Approved users should include school districts, charter schools, state agencies with responsibility for education, legislative policy analysts, evaluators of public school programs, and education researchers from established research organizations.

(d) Allow the State Department of Education, whenever possible, to give competitive advantage in grant opportunities related to improving pupil academic achievement or pupil recordkeeping to school districts that use the preidentification process for state assessments provided the unique pupil identification number developed pursuant to the California School Information Services is included in the preidentification process. This will serve to ensure the most accurate data possible and assist districts in building accurate systems for tracking individual pupil performance.

SEC. 2. Section 52052.5 of the Education Code is amended to read:

52052.5. (a) The Superintendent of Public Instruction shall establish a broadly representative and diverse advisory committee to advise the Superintendent of Public Instruction and the State Board of Education on all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. Members of the advisory

committee shall serve without compensation for terms not to exceed two years. The State Department of Education shall provide staff to the advisory panel.

(b) By July 1, 2005, the advisory committee established pursuant to this section shall make recommendations to the Superintendent of Public Instruction on the appropriateness and feasibility of a methodology for generating a measurement of academic performance by utilizing unique pupil identifiers for pupils in kindergarten and any of grades 1 to 12, inclusive, and annual academic achievement growth to provide a more accurate measure of a school's growth over time. If appropriate and feasible, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall thereafter implement this measurement of academic performance.

CHAPTER 783

An act to amend Section 44018 of, and to add Section 87018 to, the Education Code, relating to school employees.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 44018 of the Education Code is amended to read:

44018. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02 of the Military and Veterans Code, any employee of a school district who, as a member of the California National Guard or a United States Military Reserve organization, is called into active military duty, may receive, on approval of the governing board of the school district, the benefits provided for in subdivision (b).

(b) Any employee to which subdivision (a) applies, while on active duty, may receive from the school employer, for a period not to exceed 180 calendar days, as part of his or her compensation, all of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as an employee, including any merit raises that would otherwise have been granted during the time the individual was on active military duty.

(2) All benefits that he or she would have received had he or she not been called to active military duty unless the benefits are prohibited or limited by vendor contracts.

(c) The credential of a certificated employee may not become invalid for failure to renew while the employee, as a member of the California National Guard or a United States Military Reserve organization, is on active military duty. A certificated employee shall have a period of 120 days after the end of his or her active military duty to renew the credential.

SEC. 2. Section 87018 is added to the Education Code, to read:

87018. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02 of the Military and Veterans Code, any employee of a community college district who, as a member of the California National Guard or a United States Military Reserve organization, is called into active military duty, may receive, on approval of the governing board of the school district, the benefits provided for in subdivision (b).

(b) Any employee to which subdivision (a) applies, while on active duty, may receive from the community college employer, for a period not to exceed 180 calendar days, as part of his or her compensation, all of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as an employee, including any merit raises that would otherwise have been granted during the time the individual was on active military duty.

(2) All benefits that he or she would have received had he or she not been called to active military duty unless the benefits are prohibited or limited by vendor contracts.

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 784

An act to amend Section 11135 of the Government Code, relating to discrimination.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of 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) (1) As used in this section, ''disability'' means any mental or physical disability as defined in Section 12926.

(2) The Legislature finds and declares that the amendments made to this act are declarative of existing law. The Legislature further finds and declares that in enacting Senate Bill 105 of the 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002), it was the intention of the Legislature to apply subdivision (d) to the California State University in the same manner that subdivisions (a), (b), and (c) of this section already applied to the California State University, notwithstanding Section 11000. In clarifying that the California State University is subject to paragraph (2) of subdivision (d), it is not the intention of the Legislature to increase the cost of developing or procuring electronic and information technology. The California State University shall, however, in determining the cost of developing or procuring electronic or information technology, consider whether technology that meets the standards applicable pursuant to paragraph (2) of subdivision (d) will reduce the long-term cost incurred by the California State University in providing access or accommodations to future users of this technology who are persons with disabilities, as required by existing law, including this section, Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 and following), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(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.

CHAPTER 785

An act to add Section 130350.5 to the Public Utilities Code, relating to transportation.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 130350.5 is added to the Public Utilities Code, to read:

130350.5. (a) In addition to any other tax that it is authorized by law to impose, the Los Angeles County Metropolitan Transportation Authority (MTA) may impose, in compliance with subdivision (b), a transactions and use tax at a rate of 0.5 percent that is applicable in the incorporated and unincorporated areas of the county.

(b) For purposes of the taxing authority set forth in subdivision (a), all of the following apply:

(1) The tax shall be proposed in a transactions and use tax ordinance, that conforms with Chapter 2 (commencing with Section 7261) to Chapter 4 (commencing with Section 7275), inclusive, of the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), and that is approved by a majority of the entire membership of the authority.

(2) The tax may be imposed only if the proposing ordinance is approved by the voters in the manner as otherwise required by law and, if so approved, shall become operative as provided in Section 130352.

(3) The proposing ordinance shall specify, in addition to the rate of tax and other matters as required by the Transactions and Use Tax Law, that the tax is to be imposed for a period of six and one-half years or less and that the revenues derived from the tax, net of refunds and costs of administration, are to be administered by the MTA exclusively for the purposes of the ''Capital Projects,'' as described and in the amounts set forth in subparagraph (A), and for the purposes of the ''Capital Programs,'' as described and in the amounts set forth in subparagraph (B).

(A) Capital Projects.

(i) Exposition Boulevard Light Rail Transit Project from downtown Los Angeles to Santa Monica. The sum of nine hundred twenty-five million dollars ($925,000,000). This project shall be completed by 2011, and shall be the first priority for federal funding received for the capital projects in this subparagraph.

(ii) Crenshaw Metro Rapidway from Wilshire Boulevard to Los Angeles International Airport along Crenshaw Boulevard. The sum of two hundred thirty-five million five hundred thousand dollars ($235,500,000). This project shall be completed by 2008.

(iii) San Fernando Valley North-South Rapidways. The sum of one hundred million five hundred thousand dollars ($100,500,000). This project shall be completed by 2009.

(iv) Metro Gold Line (Pasadena to Irwindale) Light Rail Transit Extension. The sum of three hundred twenty-eight million dollars ($328,000,000). This project shall be completed by 2012, and shall be the second priority for federal funding received for the capital projects in this subparagraph.

(v) Metro Center Connector. The sum of one hundred sixty million dollars ($160,000,000). This project shall be completed by 2012.

(vi) Metro Red Line Extension to Fairfax Avenue. The sum of nine hundred million dollars ($900,000,000). This project shall be completed by 2012.

(vii) State Highway Route 5 Carmenita Road Interchange Improvement. The sum of one hundred thirty-eight million dollars ($138,000,000).

(viii) State Highway Route 5 Capacity Enhancement (State Highway Route 134 to State Highway Route 170, including access improvement for Empire Avenue). The sum of two hundred seventy-one million five hundred thousand dollars ($271,500,000).

(ix) State Highway Route 5 Capacity Enhancement (State Highway Route 605 to the Orange County line, including improvements to the

Valley View Interchange). The sum of two hundred sixty-four million eight hundred thousand dollars ($264,800,000).

(x) State Highway Route 5/State Highway Route 14 Capacity Enhancement. The sum of ninety million eight hundred thousand dollars ($90,800,000).

(xi) Capital Project Contingency Fund. The sum of one hundred seventy-three million dollars ($173,000,000).

(B) Capital Programs.

(i) Alameda Corridor East Grade Separations. The sum of two hundred million dollars ($200,000,000).

(ii) MTA and Municipal Regional Clean Fuel Bus Capital (Facilities and Rolling Stock). The sum of one hundred fifty million dollars ($150,000,000). The first priority for the expenditure of these funds shall be satisfaction by the MTA of the requirements of the Consent Decree between the MTA and the Labor Community and Strategy Center, et al., including the purchase of the entire number of buses required to comply with the decree.

(iii) Countywide Soundwall Construction (MTA Regional List and Monterey Park/State Highway Route 60). The sum of two hundred fifty million dollars ($250,000,000).

(iv) Local return for major street resurfacing, rehabilitation, and reconstruction. The sum of two hundred fifty million dollars ($250,000,000).

(v) Metrolink Capital Improvements. The sum of seventy million dollars ($70,000,000).

(vi) Eastside Light Rail Access. The sum of thirty million dollars ($30,000,000).

(vii) Capital Program administration. The sum of ten million dollars (10,000,000). The MTA shall use these funds for the administration of the Capital Program.

(c) The MTA may not incur bonded indebtedness payable from the proceeds of the tax provided by this section for the funding of the projects and programs specified in this section, or loan money from the proceeds to other projects or programs in advance of completing the projects and programs in subparagraphs (A) and (B) of paragraph (3) of subdivision (b). The MTA shall complete all projects and programs in subparagraphs (A) and (B) of paragraph (3) of subdivision (b) as a condition of the use and expenditure of the proceeds of the tax. The MTA shall maintain the current amount of any funding for the projects and programs specified in this section received from its sources other than the proceeds of the tax, and may not reallocate money that is already allocated for those projects and programs to other projects or uses.

(d) Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax rate authorized by this section may not be considered for purposes of the combined rate limit established by that section.

(e) A jurisdiction or recipient is eligible to receive funds from the local return program, described in clause (iv) of subparagraph (B) of paragraph (3) of subdivision (b), only if it continues to contribute to that program an amount that is equal to its existing commitment of local funds or other available funds. The MTA may develop guidelines which, at a minimum, specify maintenance of effort requirements for the local return program, matching funds, and administrative requirements for the recipients of revenue derived from the tax.

(f) Prior to submitting the ordinance to the voters, the MTA shall adopt an expenditure plan for the revenues derived from the tax. The expenditure plan shall describe the specified projects and programs listed in paragraph (3) of subdivision (b), the estimated total cost for each project and program, funds other than the tax revenues that the MTA anticipates will be expended on the projects and programs, and the schedule during which the MTA anticipates funds will be available for each project and program. To be eligible for proceeds from the tax, an agency sponsoring a capital project or capital program shall submit to the MTA an expenditure plan for its project or program containing the same elements as the expenditure plan that MTA is required by this subdivision to prepare.

(g) The MTA shall establish and administer the Capital Project Development Fund. The revenue derived from the tax shall be deposited into this fund. The moneys in the fund shall be available to the MTA only to meet expenditure and cash flow needs of the capital projects and capital programs described in subparagraphs (A) and (B) of paragraph (3) of subdivision (b), including the replacement of federal or state funds if the amount of federal or state funds received by the MTA is less than anticipated in the expenditure plan. If the sales tax revenue from this section is less than that needed to meet these expenditure and cash flow needs, the MTA shall supplement the sales tax revenue with money from other sources available to the MTA. Any funds remaining in the fund shall be allocated in equal amounts of 25 percent each to the MTA and to the Municipal Clean Fuel Bus Capital, local return, and Countywide Soundwall programs as described in subparagraph (B) of paragraph (3) of subdivision (b).

(h) If the total amount of revenue received from the tax exceeds the amount in the MTA's expenditures plan or if other funds, including, but not limited to, funds under the Traffic Congestion Relief Act of 2000 (Chapter 4.5 (commencing with Section 14556) of Part 5.3 of Division 3 of Title 2 of the Government Code), become available and are allocated to complete capital projects or capital programs, as described in

subparagraphs (A) and (B) of paragraph (3) of subdivision (b), the MTA may expend the surplus tax revenue on its next highest priority projects.

SEC. 2. The Legislature finds and declares that the tax ordinance authorized in Section 130350.5 of the Public Utilities Code is intended to provide funds necessary to complete the capital projects and capital programs described in that section and that the expenditure plan required by that section shall be structured to provide appropriate funding guarantees for the completion of each project and program.

CHAPTER 786

An act to amend Sections 48800, 48800.5, 48802, 76001, and 76002 of the Education Code, relating to public schools.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 48800 of the Education Code is amended to read:

48800. (a) The governing board of a school district may determine which pupils would benefit from advanced scholastic or vocational work. The intent of this section is to provide educational enrichment opportunities for a limited number of eligible pupils, rather than to reduce current course requirements of elementary and secondary schools. The governing board may authorize those pupils, upon recommendation of the principal of the pupil's school of attendance, and with parental consent, to attend a community college during any session or term as special part-time or full-time students and to undertake one or more courses of instruction offered at the community college level.

(b) If the governing board denies a request for a special part-time or full-time enrollment at a community college for any session or term for a pupil who is identified as highly gifted, the board shall issue its written recommendation and the reasons for the denial within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The students shall receive credit for community college courses that they complete at the level determined appropriate by the school district and community college district governing boards.

(d) (1) The principal of a school may only recommend a pupil for community college summer session if that pupil meets all of the following criteria:

(A) Demonstrates adequate preparation in the discipline to be studied.

(B) Exhausts all opportunities to enroll in an equivalent course, if any, at his or her school of attendance.

(2) For any particular grade level, a principal may not recommend for community college summer session attendance more than 5 percent of the total number of pupils who completed that grade immediately prior to the time of recommendation.

(3) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this subdivision may not be waived.

SEC. 2. Section 48800.5 of the Education Code is amended to read:

48800.5. (a) A parent or guardian of a pupil, regardless of the pupil's age or class level, may petition the governing board of the school district in which the pupil is enrolled to authorize the attendance of the pupil at a community college as a special full-time student on the ground that the pupil would benefit from advanced scholastic or vocational work that would thereby be available. If the governing board denies the petition, the pupil's parent or guardian may file an appeal with the county board of education, which shall render a final decision on the petition in writing within 30 days.

(b) A pupil who attends a community college as a special full-time student pursuant to this section is exempt from compulsory school attendance under Chapter 2 (commencing with Section 46100) of Part 26.

(c) A parent or guardian of a pupil who is not enrolled in a public school may directly petition the president of any community college to authorize the attendance of the pupil at the community college as a special part-time or full-time student on the ground that the pupil would benefit from advanced scholastic or vocational work that would thereby be available.

(d) Any pupil authorized to attend a community college as a special full-time student shall, nevertheless, be required to undertake courses of instruction of a scope and duration sufficient to satisfy the requirements of law.

(e) For purposes of allowances and apportionments from the State School Fund, a community college shall be credited with additional units of average daily attendance attributable to the attendance of special full-time students at the community college.

SEC. 3. Section 48802 of the Education Code is amended to read:

48802. (a) For purposes of allowances and apportionments from Section B of the State School Fund, a community college shall be credited with additional units of average daily attendance attributable to the attendance of pupils at the community college as special part-time students pursuant to this article and as set forth in Section 76002.

(b) A school district whose pupils attend a community college as special part-time students pursuant to this article shall, for purposes of allowances and apportionments from Section A of the State School Fund, continue to receive credit for attendance by those pupils computed in the manner prescribed by law, and a pupil's attendance at school for the minimum schoolday shall be deemed a day of attendance for purposes of making the computation.

SEC. 4. Section 76001 of the Education Code is amended to read:

76001. (a) The governing board of a community college district may admit to any community college under its jurisdiction as a special part-time or full-time student in any session or term any student who is eligible to attend community college pursuant to Section 48800 or 48800.5.

(b) If the governing board denies a request for a special part-time or full-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The attendance of a pupil at a community college as a special part-time or full-time student pursuant to this section is authorized attendance, for which the community college shall be credited or reimbursed pursuant to Sections 48802 and 76002. Credit for courses completed shall be at the level determined to be appropriate by the school district and community college district governing boards.

(d) For purposes of this section, a special part-time student may enroll in up to, and including, 11 units per semester, or the equivalent thereof, at the community college.

SEC. 5. Section 76002 of the Education Code is amended to read:

76002. (a) For the purposes of receiving state apportionments, a community college district may include high school pupils who attend a community college within the district pursuant to Sections 48800 and 76001 in the district's report of full-time equivalent students (FTES) only if those pupils are enrolled in community college classes that meet all of the following criteria:

(1) The class is open to the general public.

(2) (A) The class is advertised as open to the general public in one or more of the following:

(i) The college catalog.

(ii) The regular schedule of classes.

(iii) An addenda to the college catalog or regular schedule of classes.

(B) If a decision to offer a class on a high school campus is made after the publication of the regular schedule of classes, and the class is solely advertised to the general public through electronic media, the class shall be so advertised for a minimum of 30 continuous days prior to the first meeting of the class.

(3) If the class is offered at a high school campus, the class may not be held during the time the campus is closed to the general public, as defined by the governing board of the school district during a regularly scheduled board meeting.

(4) If the class is a physical education class, no more than 10 percent of its enrollment may be comprised of special part-time or full-time students. A community college district may not receive state apportionments for special part-time and full-time students enrolled in physical education courses in excess of 5 percent of the district's total reported full-time equivalent enrollment of special part-time and full-time students.

(b) The governing board of a community college district may restrict the admission or enrollment of a special part-time or full-time student during any session based on any of the following criteria:

(1) Age.

(2) Completion of a specified grade level.

(3) Demonstrated eligibility for instruction using assessment methods and procedures established pursuant to Chapter 2 (commencing with Section 78210) of Part 48 and regulations adopted by the Board of Governors of the California Community Colleges.

(c) The Chancellor of the California Community Colleges shall prepare and submit to the Department of Finance and the Legislature, on or before March 1, 2004, and March 1 of each year thereafter, a report on the amount of FTES claimed by each community college district for special part-time and special full-time students for the preceding academic year in each of the following class categories:

(1) Noncredit.

(2) Nondegree-applicable.

(3) Degree-applicable, excluding physical education.

(4) Degree-applicable physical education.

(d) The Board of Governors of the California Community Colleges shall adopt rules and regulations to implement this section.

CHAPTER 787

An act to amend Section 1954 of the Civil Code, to amend Section 1161.2 of, and to repeal and add Section 1166 of, the Code of Civil Procedure, and to amend Section 34328.1 of the Health and Safety Code, relating to tenancy.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 1954 of the Civil Code is amended to read:

1954. (a) A landlord may enter the dwelling unit only in the following cases:

(1) In case of emergency.

(2) 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, workers, or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

(3) When the tenant has abandoned or surrendered the premises.

(4) Pursuant to court order.

(b) 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 to an entry during other than normal business hours at the time of entry.

(c) The landlord may not abuse the right of access or use it to harass the tenant.

(d) (1) Except as provided in subdivision (e), or as provided in paragraph (2) or (3), 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 shall include the date, approximate time, and purpose of the entry. 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.

(2) 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. The notice shall include the date, approximate time, and purpose of the entry. At the time of entry, the landlord or agent shall leave written evidence of the entry inside the unit.

(3) The tenant and the landlord may agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. In this case, the landlord is not required to provide the tenant a written notice.

(e) No notice of entry is required under this section:

(1) To respond to an emergency.

(2) If the tenant is present and consents to the entry at the time of entry.

(3) After the tenant has abandoned or surrendered the unit.

SEC. 2. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (e) or (f), in any case filed under this chapter as a limited civil case, the court clerk may not allow access to the court file, index, register of actions, or other court records until 60 days after the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who (1) provides to the clerk the names of at least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises, or (2) provides to the clerk the name of one of the parties or the case number and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section, ''good cause'' includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (f), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including

any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and telephone number of the county bar association and the name and telephone number of an office funded by the federal Legal Services Corporation that provides legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to ''all occupants'' and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of four dollars ($4) for filing a first appearance by the plaintiff. This fee shall be included as part of the total filing fee for actions filed under this chapter.

(e) If a defendant prevails in the action within 60 days after the complaint is filed, the court clerk may not allow access at any time to any of the documents specified in subdivision (a).

(f) This section does not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 3. Section 1166 of the Code of Civil Procedure is repealed.

SEC. 4. Section 1166 is added to the Code of Civil Procedure, to read:

1166. (a) The complaint shall:

(1) Be verified and include the typed or printed name of the person verifying the complaint.

(2) Set forth the facts on which the plaintiff seeks to recover.

(3) Describe the premises with reasonable certainty.

(4) If the action is based on paragraph (2) of Section 1161, state the amount of rent in default.

(5) State specifically the method used to serve the defendant with the notice or notices of termination upon which the complaint is based. This requirement may be satisfied by using and completing all items relating to service of the notice or notices in an appropriate Judicial Council form complaint, or by attaching a proof of service of the notice or notices of termination served on the defendant.

(b) The complaint may set forth any circumstances of fraud, force, or violence that may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claim damages therefor.

(c) (1) In an action regarding residential property, the plaintiff shall attach to the complaint the following:

(A) A copy of the notice or notices of termination served on the defendant upon which the complaint is based.

(B) A copy of any written lease or rental agreement regarding the premises. Any addenda or attachments to the lease or written agreement that form the basis of the complaint shall also be attached. The documents required by this subparagraph are not required to be attached if the complaint alleges any of the following:

(i) The lease or rental agreement is oral.

(ii) A written lease or rental agreement regarding the premises is not in the possession of the landlord or any agent or employee of the landlord.

(iii) An action based solely on subdivision (2) of Section 1161.

(2) If the plaintiff fails to attach the documents required by this subdivision, the court shall grant leave to amend the complaint for a 5-day period in order to include the required attachments.

(d) Upon filing the complaint, a summons shall be issued thereon.

SEC. 5. Section 34328.1 of the Health and Safety Code is amended to read:

34328.1. (a) Every housing authority shall file on the first day of October of each year with the Department of Housing and Community Development a complete report of its activities during the previous fiscal year, with recommendations for needed legislation to carry on properly a program of housing and community development in this state.

(b) The authority shall provide the Department of Housing and Community Development funds as requested by the department to reimburse the department for the cost of processing the report required by this section.

(c) (1) The report shall include data on terminations of tenancies of victims of domestic violence in housing authority units, and terminations of Section 8 vouchers of victims of domestic violence. The data shall be included in all cases where a notice of termination was given, regardless of whether the termination was based in whole or in part on activity related to the domestic violence, and whether the notice resulted in the victim vacating the premises or actual termination of the voucher.

(2) For each termination, the report shall briefly specify steps taken, if any, by the authority to address the situation or assist the victim prior to the termination, and, if known, the subsequent housing obtained by

the victim. If no steps were taken, the authority may include an explanation of why none were deemed necessary.

(3) The report shall include data on terminations of all victims of domestic violence, as reported or known to the authority, its employees, or agents, whether or not an arrest was made or any report was filed.

(4) The report may include any other information regarding domestic violence victim terminations deemed relevant by the authority.

(5) The report required on October 1, 2004, shall include data on all cases where a notice of termination was given to the victim from January 1, 2004, to the end of the fiscal year reportable on October 1, 2004.

(6) For purposes of this section, ''domestic violence'' has the meaning set forth in Section 6211 of the Family Code.

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.

SEC. 7. 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. 8. Section 4 of this act shall become operative January 1, 2005.

CHAPTER 788

An act to amend Sections 125.9, 1616.5, 1742, 1765, 1775, 7303.1, 7309, 7313, 7317, 7319.5, 7321, 7321.5, 7324, 7326, 7330, 7332, 7333, 7334, 7335, 7336, 7337, 7337.5, 7338, 7340, 7341, 7342, 7344, 7353, 7354, 7355, 7356, 7357, 7359, 7362, 7362.1, 7362.2, 7362.3, 7364, 7365, 7366, 7367, 7389, 7395.1, 7396, 7400, 7401, 7403, 7404, 7405, 7406, 7407, 7408, 7409, 7410, 7414.1, 7414.3, 7414.4, 7414.6, 7415, 7421, and 7422 of, and to amend and repeal Sections 1601.1, 7390, 7391, 7392, 7393, 7394, and 7395 of, to add Sections 7303.2 and 7403.5 to, to repeal Sections 7331.5, 7340.5, 7416, and 7423.5 of, and to repeal and add Sections 7331 and 7423 to, the Business and Professions Code, to amend Section 830.3 of the Penal Code, and to repeal Sections 3 and 4 of Chapter 859 of the Statutes of 2001, relating to business and professions.

[Approved by Governor October 10, 2003. Filed with
Secretary of State October 11, 2003.]

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

SECTION 1. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in

disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

SEC. 2. Section 1601.1 of the Business and Professions Code, as added by Section 2 of Chapter 625 of the Statutes of 2002, is amended to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

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

(e) This section shall become inoperative on July 1, 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 1601.1 of the Business and Professions Code, as added by Section 2.5 of Chapter 532 of the Statutes of 2001, is repealed.

SEC. 4. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become operative on January 1, 2002.

(c) This section shall become inoperative on July 1, 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. 5. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.

(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:

(1) The committee shall have the following duties and authority related to education programs and curriculum:

(A) Shall evaluate all dental auxiliary programs applying for board approval in accordance with board rules governing the programs.

(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.

(C) Shall report and make recommendations to the board as to whether a program or course qualifies for approval. The board retains the final authority to grant or deny approval to a program or course.

(D) Shall review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at the request of the board.

(E) May review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at its own initiation.

(2) The committee shall have the following duties and authority related to applications:

(A) Shall review and evaluate all applications for licensure in the various dental auxiliary categories to ascertain whether a candidate meets the appropriate licensing requirements specified by statute and board regulations.

(B) Shall maintain application records, cashier application fees, and perform any other ministerial tasks as are incidental to the application process.

(C) May delegate any or all of the functions in this paragraph to its staff.

(D) Shall issue auxiliary licenses in all cases, except where there is a question as to a licensing requirement. The board retains final authority to interpret any licensing requirement. If a question arises in the area of interpreting any licensing requirement, it shall be presented by the committee to the board for resolution.

(3) The committee shall have the following duties and authority regarding examinations:

(A) Shall advise the board as to the type of license examination it deems appropriate for the various dental auxiliary license categories.

(B) Shall, at the direction of the board, develop or cause to be developed, administer, or both, examinations in accordance with the board's instructions and periodically report to the board on the progress of those examinations. The following shall apply to the examination procedure:

(i) The examination shall be submitted to the board for its approval prior to its initial administration.

(ii) Once an examination has been approved by the board, no further approval is required unless a major modification is made to the examination.

(iii) The committee shall report to the board on the results of each examination and shall, where appropriate, recommend pass points.

(iv) The board shall set pass points for all dental auxiliary licensing examinations.

(C) May appoint board members to any examination committee established pursuant to subparagraph (B).

(4) The committee shall periodically report and make recommendations to the board concerning the level of fees for dental auxiliaries and the need for any legislative fee increase. However, the board retains final authority to set all fees.

(5) The committee shall be responsible for all aspects of the license renewal process, which shall be accomplished in accordance with this chapter and board regulations. The committee may delegate any or all of its functions under this paragraph to its staff.

(6) The committee shall have no authority with respect to the approval of continuing education providers; the board retains all of this authority.

(7) The committee shall advise the board as to appropriate standards of conduct for auxiliaries, the proper ordering of enforcement priorities, and any other enforcement-related matters that the board may, in the future, delegate to the committee. The board shall retain all authority with respect to the enforcement actions, including, but not limited to,

complaint resolution, investigation, and disciplinary action against auxiliaries.

(8) The committee shall have the following duties regarding regulations:

(A) To review and evaluate all suggestions or requests for regulatory changes related to dental auxiliaries.

(B) To report and make recommendations to the board, after consultation with departmental legal counsel and the board's executive officer.

(C) To include in any report regarding a proposed regulatory change, at a minimum, the specific language of the proposed changes and the reasons for and facts supporting the need for the change. The board has the final rulemaking authority.

(c) This section shall become inoperative on July 1, 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 committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 1765 of the Business and Professions Code is amended to read:

1765. No person other than a licensed dental hygienist or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A dental assistant acting in accordance with the rules of the board in performing the following procedures:

(1) Applying nonaerosol and noncaustic topical agents.

(2) Applying topical fluoride.

(3) Taking impression for bleaching trays.

(c) A registered dental assistant acting in accordance with the rules of the board in performing the following procedures:

(1) Polishing the coronal surfaces of teeth.

(2) Applying bleaching agents.

(3) Activating bleaching agents with a nonlaser light-curing device.

(d) A registered dental assistant in extended functions acting in accordance with the rules of the board in applying pit and fissure sealants.

(e) A registered dental hygienist licensed in another jurisdiction performing a clinical demonstration for educational purposes.

SEC. 7. Section 1775 of the Business and Professions Code is amended to read:

1775. (a) A registered dental hygienist in alternative practice may perform those preventive and therapeutic functions described in subdivision (a) of Section 1760, subdivision (a) of Section 1760.5, and subdivisions (a) and (b) of Section 1762 as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice, or as an employee of a primary care clinic or specialty clinic that is licensed pursuant to Section 1204 of the Health and Safety Code or as an employee of a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or as an employee of a clinic owned or operated by a public hospital or health system, or as an employee of a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(b) A registered dental hygienist in alternative practice may perform the dental hygiene services specified in subdivision (a) in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond those services specified in subdivision (a).

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to the prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 8. Section 7303.1 of the Business and Professions Code is amended to read:

7303.1. Protection of the public shall be the highest priority for the Board of Barbering and Cosmetology in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 9. Section 7303.2 is added to the Business and Professions Code, to read:

7303.2. The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Legislative Sunset Review Committee no later than September 1, 2005:

(a) The board, pursuant to Section 139 and in conjunction with the Office of Examination Resources of the department, shall review the 1600 hour training requirement for cosmetologists.

(b) The board, in conjunction with the Office of Examination Resources of the department, shall evaluate the equivalency of the national exam.

(c) The board shall conduct a study to assess the costs and benefits associated with requiring all applicants to submit fingerprint cards for background investigations.

(d) The board, in coordination with the Department of Industrial Relations, shall review all components of the apprenticeship program, including but not limited to, the following:

(1) Apprenticeship curriculum requirements.

(2) The standards for the preapprentice trainers, program sponsors, trainers, and placement establishments. The board shall pay particular attention to ways to eliminate duplicative regulations.

(e) The board shall review all components of the externship program. In addition to structural changes, the board shall address the following:

(1) Whether the program should be eliminated.

(2) Whether the program should be available to all students, not just cosmetology students attending private schools.

(3) Whether the students should be paid.

(f) The board shall assess the costs and benefits associated with same day licensing. If the board determines that the benefits of same day licensing outweigh the costs, the board shall immediately plan and implement safety measures to protect site staff and undispersed licenses.

(g) The board, in conjunction with the Office of Examination Resources of the department, shall assess the validity of aggregate scoring for board applicants.

SEC. 10. 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 board to conduct its business.

SEC. 11. 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 board's executive officer 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 board 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 board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board 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 board, the executive officer 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. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of

patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice of violation shall be provided to the Bureau for Private Postsecondary and Vocational Education.

(c) With prior written authorization from the board or its executive officer, any member of the board may enter and visit, in his or her capacity as a board member, any establishment, during business hours or at any time when barbering, cosmetology, or electrolysis is being performed. The visitation by a board member shall be for the purpose of conducting official board business, but shall not be used as a basis for any licensing disciplinary action by the board.

SEC. 12. Section 7317 of the Business and Professions Code is amended to read:

7317. Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which barbering, cosmetology, or electrolysis is practiced unless licensed under this chapter. Persons licensed under this chapter shall limit their practice and services rendered to the public to only those areas for which they are licensed. Any violation of this section is a misdemeanor.

SEC. 13. Section 7319.5 of the Business and Professions Code is amended to read:

7319.5. Students engaged in performing services on the public while enrolled in a school approved by the board shall not be required to be licensed under this chapter if they perform those services at the approved school in which they are enrolled.

SEC. 14. Section 7321 of the Business and Professions Code is amended to read:

7321. The board shall admit to examination for a license as a cosmetologist to practice cosmetology any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in cosmetology from a school approved by the board.

(2) Practiced cosmetology as defined in this chapter outside of this state for a period of time equivalent to the study and training of a

qualified person who has completed a course in cosmetology from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1) of this subdivision.

(3) Holds a license as a barber in this state and has completed a cosmetology crossover course in a school approved by the board.

(4) Completed a barbering course in a school approved by the board and has completed a cosmetology crossover course in a school approved by the board.

(5) Completed the apprenticeship program in cosmetology specified in Article 4 (commencing with Section 7332).

SEC. 15. Section 7321.5 of the Business and Professions Code is amended to read:

7321.5. The board shall admit to examination for a license as a barber to practice barbering, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in barbering from a school approved by the board.

(2) Completed an apprenticeship program in barbering approved by the board as conducted under the provisions of the Shelley-Maloney Apprentice Labor Standards Act of 1939, Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(3) Practiced barbering as defined in this chapter outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in barbering from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(4) Holds a license as a cosmetologist in this state and has completed a barber crossover course in a school approved by the board.

(5) Completed a cosmetology course in a school approved by the board and has completed a barber crossover course in a school approved by the board.

(6) Completed comparable military training as documented by submission of Verification of Military Experience and Training (V-MET) records.

SEC. 16. Section 7324 of the Business and Professions Code is amended to read:

7324. The board shall admit to examination for a license as an esthetician to practice skin care, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in skin care from a school approved by the board.

(2) Practiced skin care, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in skin care from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(3) Completed the apprenticeship program in skin care specified in Article 4 (commencing with Section 7332).

SEC. 17. Section 7326 of the Business and Professions Code is amended to read:

7326. The board shall admit to examination for a license as a manicurist to practice nail care, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in nail care from a school approved by the board.

(2) Practiced nail care, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in nail care from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(3) Completed the apprenticeship program in nail care specified in Article 4 (commencing with Section 7332).

SEC. 18. Section 7330 of the Business and Professions Code is amended to read:

7330. The board shall admit to examination for a license as an electrologist to practice electrolysis, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course of training in electrolysis from a school approved by the board.

(2) Practiced electrolysis, as defined in this chapter, for a period of 18 months outside of this state within the time equivalent to the study and training of a qualified person who has completed a course in electrolysis from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(3) Completed the apprenticeship program in electrology specified in Article 4 (commencing with Section 7332).

SEC. 19. Section 7331 of the Business and Professions Code is repealed.

SEC. 20. Section 7331 is added to the Business and Professions Code, to read:

7331. The board may grant a license to practice to an applicant if the applicant submits all of the following to the board:

(a) A completed application form and all fees required by the board.

(b) Proof of a current license issued by another state to practice that is not revoked or suspended or otherwise restricted.

(c) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed to practice. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(d) Any other information as specified by the board to the extent it is required of applicants for licensure by examination under this article.

SEC. 21. Section 7331.5 of the Business and Professions Code is repealed.

SEC. 22. Section 7332 of the Business and Professions Code is amended to read:

7332. An apprentice is any person who is licensed by the board to engage in learning or acquiring a knowledge of barbering, cosmetology, skin care, nail care, or electrology, in a licensed establishment under the supervision of a licensee approved by the board.

SEC. 23. Section 7333 of the Business and Professions Code is amended to read:

7333. The apprentice training program shall be conducted in compliance with the Shelley-Maloney Apprentice Labor Standards Act of 1939, Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code, according to apprenticeship standards approved by the administrator of apprenticeship. A copy of the act shall be maintained on file with the board.

SEC. 24. Section 7334 of the Business and Professions Code is amended to read:

7334. (a) The board may license as an apprentice in barbering, cosmetology, skin care, or nail care any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:

(1) Is over 16 years of age.

(2) Has completed the 10th grade in the public schools of this state or its equivalent.

(3) Is not subject to denial pursuant to Section 480.

(4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.

(b) The board may license as an apprentice in electrolysis any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:

(1) Is not less than 17 years of age.

(2) Has completed the 12th grade or an accredited senior high school course of study in schools of this state or its equivalent.

(3) Is not subject to denial pursuant to Section 480.

(4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.

(c) All persons making application as an apprentice in barbering shall also complete a minimum of 39 hours of preapprentice training in a facility approved by the board prior to serving the general public.

(d) All persons making application as an apprentice in cosmetology, skin care, nail care, or electrology shall also complete minimum preapprentice training for the length of time established by the board in a facility approved by the board prior to serving the general public.

(e) Apprentices may only perform services on the general public for which they have received technical training.

(f) Apprentices shall be required to obtain at least the minimum hours of technical instruction and minimum number of practical operations for

each subject as specified in board regulations for courses taught in schools approved by the board, in accordance with Sections 3074 and 3078 of the Labor Code.

SEC. 25. 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) No person holding a license as an apprentice shall work more than three months after completing the required training without applying for and taking the examination for licensure.

(c) The board 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. 26. Section 7336 of the Business and Professions Code is amended to read:

7336. An apprentice may do any or all of the acts for which he or she is licensed only in the licensed establishment and under the supervision and employment of a licensee approved by the board.

SEC. 27. Section 7337 of the Business and Professions Code is amended to read:

7337. Every application for admission to examination and licensure shall be in writing, on forms prepared and furnished by the board.

Each application shall be accompanied by the required fee, and shall contain proof of the qualifications of the applicant for examination and licensure. It shall be verified by the oath of the applicant. Every applicant shall, as a condition of admittance to the examination facility, present satisfactory proof of identification. Satisfactory proof of identification shall be in the form of a valid, unexpired driver's license or identification card, containing the photograph of the person to whom it was issued, issued by any state, federal, or other government entity.

SEC. 28. Section 7337.5 of the Business and Professions Code is amended to read:

7337.5. (a) The board shall adopt regulations providing for the submittal of applications for admission to examination of students of approved cosmetology, electrology, or barbering schools who have completed at least 75 percent of the required course clock hours and curriculum requirements (60 percent for students of the manicurist course), or any person licensed as an apprentice in barbering, cosmetology, skin care, or nail care who has completed at least 75

percent of the required apprenticeship training hours. The regulations shall include provisions that ensure that all proof of qualifications of the applicant is received by the board before the applicant is examined.

(b) An application for examination submitted by a student of an approved cosmetology, electrology, or barbering school under this section shall be known as a ''school preapplication'' and an additional preapplication fee may be required.

(c) An application for examination submitted by a person licensed as an apprentice in barbering, cosmetology, skin care, or nail care shall be known as an ''apprenticeship preapplication'' and an additional fee may be required.

(d) The board shall administer the licensing examination not later than 10 working days after graduation from an approved cosmetology, electrology, or barbering school to students who have submitted an application for admission for examination under the preapplication procedure, or not later than 10 working days after completion of an approved barbering, cosmetology, skin care, or nail care apprenticeship program for a person licensed as an apprentice.

SEC. 29. Section 7338 of the Business and Professions Code is amended to read:

7338. The examination of applicants for a license shall include both a practical demonstration and a written test and shall embrace the subjects typically taught in a program approved by the board.

The examination shall not be confined to any particular system or method. It shall be consistent in both practical and technical requirements, and of sufficient thoroughness to satisfy the board as to the applicant's skill in, and knowledge of, the practice of the occupation or occupations for which a license is sought.

In the conduct and grading of examinations, practical demonstrations shall prevail over written tests.

The scope of examinations shall be consistent with the definition of the activities licensed under this chapter, and shall be as the board, by regulation, may require to protect the health and safety of consumers of the services provided by licensees.

The board's examinations shall be limited to clearly job-related questions, activities, and practical services. Examinations shall also include written tests in antisepsis, disinfection, sanitation, the use of mechanical apparatus and electricity as applicable to the practice of barbering, cosmetology, or electrolysis. They may include other demonstrations and tests as the board, in its discretion, may require.

SEC. 30. Section 7340 of the Business and Professions Code is amended to read:

7340. All examinations shall be prepared by or under the direction of the board. The board shall establish standards and procedures

governing administration and grading and shall exercise supervision as may be necessary to assure compliance therewith.

SEC. 31. Section 7340.5 of the Business and Professions Code is repealed.

SEC. 32. Section 7341 of the Business and Professions Code is amended to read:

7341. The board shall mail or deliver to every person failing any examination provided for in this chapter the total grade received on the examination.

An unsuccessful applicant for licensure, after taking an examination and within 90 days after the results thereof have been declared, shall have the right to inspect his or her examination paper in the city in which the examination was taken.

SEC. 33. 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 board 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 board on the same day that the applicant satisfactorily passes the examination.

SEC. 34. Section 7344 of the Business and Professions Code is amended to read:

7344. The board may contract or otherwise arrange for reasonably required physical accommodations and facilities to conduct examinations.

SEC. 35. 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 board 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 board adopted pursuant to this chapter.

(2) The board may inspect the establishment for which a license application has been made prior to the issuance of the license.

(b) The board 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 board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement.

(d) The board 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. 36. Section 7354 of the Business and Professions Code is amended to read:

7354. For purposes of this article, ''mobile unit'' means any self-contained, self-supporting, enclosed mobile unit which is at least 24 feet in length which is licensed as an establishment for the practice of any occupation licensed by the board and which complies with this article and all health and safety regulations established by the board.

SEC. 37. Section 7355 of the Business and Professions Code is amended to read:

7355. (a) Any person, firm, or corporation desiring to operate a mobile unit shall make an application to the board for a license containing the information and data set forth in subdivision (b). The applicant, if an individual, or each officer, director, and partner, if the applicant is other than an individual, shall not have committed acts or crimes which are grounds for denial of licensure pursuant to Section 480. A license issued pursuant to this section shall authorize the operation of the unit only within those geographical boundaries designated by the board. Operation of the unit outside of the geographical boundaries for which the license is issued shall be unlawful, unless a license for the expanded geographic area has been obtained upon compliance with this article applicable to the issuance of a license in the first instance.

(b) Each application shall include the following:

(1) A detailed floor plan showing the location of doors, windows, restroom facilities, sinks, lift or ramps, ventilation, equipment, and dimensions of the mobile unit in compliance with this article.

(2) Proof of purchase or lease of the mobile unit and shop equipment.

(3) The required fee.

(4) Copies of applicable county and city licenses or permits to provide the mobile barbering, cosmetology, or electrolysis services in each county and city of operation and the locations therein where the services will be offered.

(5) Proof of compliance with applicable city, county, and state plumbing, electrical, and fire laws.

(6) Proof of a valid California driver's license issued to an officer or employee responsible for driving the mobile unit.

(7) A permanent base address from which the mobile unit shall operate.

(c) After initial approval of the floor plan and application has been granted, the applicant shall schedule an appointment to show the mobile unit to the board, or representative of the board, for final approval.

SEC. 38. Section 7356 of the Business and Professions Code is amended to read:

7356. An application to transfer ownership or control of an existing licensed mobile unit shall be filed by the purchaser or lessor with the board within 10 days after purchase. Each application shall include the following:

(a) A detailed floor plan showing the location of doors, windows, restroom facilities, sinks, lift or ramps, ventilation, equipment, and dimensions of the mobile unit.

(b) Bills of sale or lease documents proving purchase or lease of existing equipment and the mobile unit.

(c) The existing mobile unit license.

(d) The required fee.

(e) Copies of applicable city and county licenses or permits to provide the mobile services in each county and city of operation issued in the new owner's name.

(f) Proof of compliance with applicable city, county, and state plumbing, electrical, and fire laws.

(g) Proof of a valid California driver's license issued to an officer or employee responsible for driving the mobile unit.

SEC. 39. Section 7357 of the Business and Professions Code is amended to read:

7357. (a) Mobile units shall comply with regulations adopted by the board that assure that the unit shall be kept clean, in good repair, and in compliance with this article.

(b) Each mobile unit shall be equipped with each of the following functioning systems:

(1) A self-contained, potable water supply. The potable water tanks shall be not less than 100 gallons, and the holding tanks shall be of adequate capacity. In the event of depletion of potable water, operation shall cease until the supply is replenished.

(2) Continuous, on-demand hot water tanks which shall be not less than six-gallon capacity.

(3) A self-contained, recirculating, flush chemical toilet with holding tank.

(4) A covered galvanized, stainless steel, or other noncorrosive metal container for purposes of depositing hair clippings, refuse, and other waste materials.

(5) A split-lead generator with a remote starter, muffler, and a vent to the outside.

(6) A sealed combustible heater with an outside vent.

SEC. 40. Section 7359 of the Business and Professions Code is amended to read:

7359. It is unlawful for any person, firm or corporation to hire, employ, allow to be employed, or permit to work, in or about a mobile unit, any person who performs or practices any occupation regulated under this chapter who is not duly licensed by the board.

Any person violating this section is guilty of a misdemeanor.

SEC. 41. Section 7362 of the Business and Professions Code is amended to read:

7362. (a) A school approved by the board 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 board.

(b) The board 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. 42. Section 7362.1 of the Business and Professions Code is amended to read:

7362.1. A school of cosmetology approved by the board shall also meet all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 25 cosmetology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of cosmetology at least 25 bona fide, full-time students for the cosmetology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of cosmetology and has committed to attend a full course in cosmetology.

(c) Maintain a course of practical training and technical instruction for the full cosmetology course as specified in this chapter and in board regulations. A course of instruction in any branch of cosmetology shall be taught in a school of cosmetology.

SEC. 43. Section 7362.2 of the Business and Professions Code is amended to read:

7362.2. A school of barbering approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 15 barber students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of barbering at least 15 bona fide, full-time students for the barbering course. For purposes

of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of barbering and has committed to attend a full course in barbering.

(c) Maintain a course of practical training and technical instruction for the full barbering course as specified in this chapter and in board regulations.

SEC. 44. Section 7362.3 of the Business and Professions Code is amended to read:

7362.3. A school of electrology approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of five electrology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of electrology at least five bona fide, full-time students for the electrology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of electrology and has committed to attend a full course in electrology.

(c) Maintain a course of practical training and technical instruction for the full electrology course as specified in this chapter and in board regulations.

SEC. 45. Section 7364 of the Business and Professions Code is amended to read:

7364. A skin care course established by a school shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

SEC. 46. Section 7365 of the Business and Professions Code is amended to read:

7365. A nail care course established by a school shall consist of not less than 350 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

SEC. 47. Section 7366 of the Business and Professions Code is amended to read:

7366. An electrolysis course established by a school shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

SEC. 48. Section 7367 of the Business and Professions Code is amended to read:

7367. For students who change from one program of instruction to another, the board shall grant credit for training obtained in one course that is identical to training required in another course.

SEC. 49. Section 7389 of the Business and Professions Code is amended to read:

7389. The board shall develop or adopt a health and safety course on hazardous substances which shall be taught in schools approved by the board. Course development shall include pilot testing of the course and training classes to prepare instructors to effectively use the course.

SEC. 50. Section 7390 of the Business and Professions Code is amended to read:

7390. (a) A cosmetology or barbering instructor training course shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

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

SEC. 51. Section 7391 of the Business and Professions Code is amended to read:

7391. (a) The board shall admit to examination for license as a cosmetology or barbering instructor any person who has made application to the board in the proper form, who has paid the fee required by this chapter, and who meets the following qualifications:

(1) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.

(2) Is not subject to denial pursuant to Section 480.

(3) Holds a valid license to practice cosmetology or barbering in this state.

(4) Has done at least one of the following:

(A) Completed a cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state.

(B) Completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the board.

(C) Practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state. An applicant using practical experience to qualify under this section shall submit an affidavit signed by his or her employers attesting to the qualifying experience.

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

SEC. 52. Section 7392 of the Business and Professions Code is amended to read:

7392. (a) Each licensed instructor shall complete at least 30 clock hours of continuing education in the teaching of vocational education during each two-year licensing period. This section does not apply to an

instructor who holds a credential to teach vocational education full time in a public school in this state.

(b) For purposes of this section, programs designed for continuing education in the teaching of vocational education may include, but not be limited to, development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

(c) The board shall adopt regulations establishing standards for the approval of continuing education courses and for the effective administration and enforcement of its continuing education requirements.

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

SEC. 53. Section 7393 of the Business and Professions Code is amended to read:

7393. (a) As a condition of the renewal of the license of an instructor, the board may periodically require instructors to demonstrate current competence through continuing education as provided for in this chapter.

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

SEC. 54. Section 7394 of the Business and Professions Code is amended to read:

7394. (a) The board's continuing education requirements shall not apply to instructors whose licenses are on inactive status according to the records maintained by the board.

(b) Instructors whose licenses are on inactive status may not be employed as instructors in schools approved by the board.

(c) Instructors whose licenses are on inactive status must complete at least 30 hours of continuing education in the teaching of vocational education as a condition of reinstatement to active status.

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

SEC. 55. Section 7395 of the Business and Professions Code is amended to read:

7395. (a) If an instructor with an active license status does not provide proof of compliance with the continuing education requirements provided for in this chapter within 45 days of a request from the board, the instructor's license shall revert to inactive status until proof of compliance is provided to the board.

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

SEC. 56. Section 7395.1 of the Business and Professions Code is amended to read:

7395.1. (a) A student who is enrolled in a school of cosmetology approved by the Bureau for Private Postsecondary and Vocational Education in a course approved by the board may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in cosmetology establishments meeting all of the following criteria:

(1) The establishment is licensed by the board.

(2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.

(3) All licensees at the establishment are in good standing with the board.

(4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree in writing sent to the school and to all affected licensees that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) (1) A school participating in the externship program shall provide the participating establishment and the extern with a syllabus containing applicable information specified in Section 73880 of Title 5 of the California Code of Regulations. The extern, the school, and the establishment shall agree to the terms of and sign the syllabus prior to the extern beginning work at the establishment. No less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology as defined in Section 7316.

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The cosmetology establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as cosmetology malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of cosmetology for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of cosmetology as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved cosmetology school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate law.

SEC. 57. Section 7396 of the Business and Professions Code is amended to read:

7396. The form and content of a license issued by the board shall be determined in accordance with Section 164.

The license shall prominently state that the holder is licensed as a barber, cosmetologist, esthetician, manicurist, electrologist, or apprentice, and shall contain a photograph of the licensee.

SEC. 58. Section 7400 of the Business and Professions Code is amended to read:

7400. Every licensee of the board, except establishments shall, within 30 days after a change of address, notify the board of the new address, and, upon receipt of the notification, the board shall make the necessary changes in the register.

SEC. 59. Section 7401 of the Business and Professions Code is amended to read:

7401. (a) An individual licensed pursuant to Section 7396 shall report to the board at the time of license renewal, his or her practice status, designated as one of the following:

(1) Full-time practice in California.

(2) Full-time practice outside of California.

(3) Part-time practice in California.

(4) Not working in the industry.

(5) Retired.

(6) Other practice status, as may be further defined by the board.

(b) An individual licensed pursuant to Section 7396 shall, at the time of license renewal, identify himself or herself on the application as one of the following:

(1) Employee.

(2) Independent contractor or booth renter.

(3) Salon owner.

(c) An individual licensed pursuant to Section 7347 shall report to the board at the time of license renewal, whether either of the following is applicable to him or her:

(1) He or she has a booth renter operating in the establishment.

(2) He or she has an independent contractor operating in the establishment.

(d) The board shall report to the Senate Committee on Business and Professions and the Assembly Committee on Business and Professions within five years after the implementation of the provisions of this section on the licensee information collected, including an assessment of whether a certain type of licensee is more likely to receive complaints or citations, or to fail to pay taxes, and any recommendation on how to remedy problems found.

SEC. 60. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) The board 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 board shall have all the powers granted therein.

(b) In any case in which the administrative law judge recommends that the board revoke, suspend or deny a license, the administrative law

judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation and adjudication of the case. For purposes of this section, ''costs'' include charges by the board 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 board. When the board 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) The board 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 board may have as to any licensee directed to pay costs.

(e) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(f) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

SEC. 61. 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 executive officer, 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 executive officer 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 executive officer, 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 executive officer 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 executive officer 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 executive officer, but shall be in effect for no longer than 30 days. Removal of the notice of suspension by any person other than the executive officer 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. 62. Section 7404 of the Business and Professions Code is amended to read:

7404. The grounds for disciplinary action are as follows:

(a) Unprofessional conduct which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence, including failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology or disregard for the health and safety of patrons.

(2) Repeated similar negligent acts.

(3) Conviction of any crime substantially related to the qualifications, functions, or duties of the licenseholder, in which case, the records of conviction or a certified copy shall be conclusive evidence thereof.

(4) Advertising by means of knowingly false or deceptive statements.

(b) Failure to comply with the requirements of this chapter.

(c) Failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Health Services, for the regulation of establishments, or any practice licensed and regulated under this chapter.

(d) Failure to comply with the rules adopted by the board for the regulation of establishments, or any practice licensed and regulated under this chapter.

(e) Continued practice by a person knowingly having an infectious or contagious disease.

(f) Habitual drunkenness, habitual use of or addiction to the use of any controlled substance.

(g) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(h) Failure to display the license or health and safety rules and regulations in a conspicuous place.

(i) Engaging, outside of a licensed establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when the service is provided because of illness or other physical or mental incapacitation of the recipient of the service and when performed by a licensee obtained for the purpose from a licensed establishment.

(j) Permitting a license to be used where the holder is not personally, actively, and continuously engaged in business.

(k) The making of any false statement as to a material matter in any oath or affidavit, which is required by the provisions of this chapter.

(*l*) Refusal to permit or interference with an inspection authorized under this chapter.

(m) Any action or conduct which would have warranted the denial of a license.

(n) Failure to surrender a license that was issued in error or by mistake.

SEC. 63. Section 7405 of the Business and Professions Code is amended to read:

7405. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

SEC. 64. Section 7406 of the Business and Professions Code is amended to read:

7406. In addition to the authority to conduct disciplinary proceedings under this chapter, the board, through its duly authorized representatives, shall have authority to assess administrative fines for the violation of any section of this chapter or the violation of any rules and regulations adopted by the board under this chapter.

SEC. 65. Section 7407 of the Business and Professions Code is amended to read:

7407. The board shall establish by regulation a schedule of administrative fines for violations of this chapter. All moneys collected under this section shall be deposited in the board's contingent fund.

The schedule shall indicate for each type of violation whether, in the board's discretion, the violation can be corrected. The board shall review and revise the schedule of administrative fines for violations by January 1, 2005. The board shall ensure that it and the Bureau for Private Postsecondary and Vocational Education do not issue citations for the same violation.

SEC. 66. Section 7408 of the Business and Professions Code is amended to read:

7408. The board, 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 board pursuant to Section 7406.

SEC. 67. Section 7409 of the Business and Professions Code is amended to read:

7409. Any licensee served with a citation may avoid the payment of the associated administrative fine by presentation of written proof satisfactory to the board, or its executive officer, that the violation has been corrected. This provision applies only to a licensee's first violation in any three-year period of any single provision of this chapter or the rules and regulations adopted pursuant to this chapter. Proof of correction shall be presented to the board, through its executive officer, in a time and manner prescribed by the board. The board may, in its discretion, extend for a reasonable period the time within which to correct the violation upon the showing of good cause. Notices of correction filed after the prescribed date shall not be acceptable and the administrative fine shall be paid.

SEC. 68. Section 7410 of the Business and Professions Code is amended to read:

7410. Persons to whom a notice of violation or a citation is issued and an administrative fine assessed may appeal the citation to a disciplinary review committee established by the board. All appeals shall be submitted in writing to the program within 30 days of the date the citation was issued. Appeals of citations that are not submitted in a timely manner shall be rejected.

After a timely appeal has been filed with the program, the administrative fine, if any, shall be stayed until the appeal has been adjudicated.

Persons appealing a citation, or their appointed representatives, shall appear in person before the disciplinary review committee. The appellant may present written or oral evidence relating to the facts and circumstances relating to the citation that was issued. Following an appeal before a disciplinary review committee, the disciplinary review committee shall issue a decision, based on findings of fact, which may affirm, reduce, dismiss, or alter any charges filed in the citation. In no event shall the administrative fine be increased. The appellant shall be provided with a written copy of the disciplinary review committee's decision relating to the appeal.

SEC. 69. Section 7414.1 of the Business and Professions Code is amended to read:

7414.1. All records required by law to be kept by tanning facilities subject to the Filante Tanning Facility Act of 1988 (Chapter 23 (commencing with Section 22700) of Division 8), including, but not limited to, records relating to written warning statements, the sign required to be posted, the qualifications of facility operators, statements of acknowledgment, parental consent forms, and injury reports, shall be open to inspection by the board, or its authorized representatives, during any inspection, or during any investigation initiated in response to a complaint that the tanning facility has violated any provision of the Filante Tanning Facility Act of 1988. A copy of any or all of those records shall be provided to the board, or its authorized representatives, immediately upon request.

SEC. 70. Section 7414.3 of the Business and Professions Code is amended to read:

7414.3. (a) Any representative of the board designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Representatives so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of that designation. Except as otherwise provided, the representative's authority is limited to the issuance of written notices to appear for infraction violations of the Filante Tanning Facility Act of 1988 and only when the violation is committed in the presence of the representative.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any representative, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or

which the representative, at the time of that arrest, had reasonable cause to believe was lawful.

(c) This section shall become effective July 1, 1994.

SEC. 71. Section 7414.4 of the Business and Professions Code is amended to read:

7414.4. The board, and its authorized representatives, may disseminate information to tanning facilities regarding compliance with the Filante Tanning Facility Act of 1988.

SEC. 72. Section 7414.6 of the Business and Professions Code is amended to read:

7414.6. The board may adopt regulations concerning the operation of tanning facilities in licensed establishments.

SEC. 73. Section 7415 of the Business and Professions Code is amended to read:

7415. Licenses issued under this chapter, unless specifically excepted, shall be issued for a two-year period and shall expire at midnight on the last day of the month of issuance by the board.

SEC. 74. Section 7416 of the Business and Professions Code is repealed.

SEC. 75. Section 7421 of the Business and Professions Code is amended to read:

7421. The fees shall be set by the board, within the limits set forth in this article, in amounts necessary to cover the expenses of the board in performing its duties under this chapter.

SEC. 76. Section 7422 of the Business and Professions Code is amended to read:

7422. All fees collected on behalf of the board and all receipts of every kind and nature, shall be reported to the Controller at the beginning of each month for the month preceding. At the same time the entire amount of collections shall be paid into the State Treasury, and shall be credited to the Barbering and Cosmetology Contingent Fund, which fund is hereby created.

The moneys in the contingent fund shall be appropriated to the board pursuant to the annual Budget Act and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect this chapter.

SEC. 77. Section 7423 of the Business and Professions Code is repealed.

SEC. 78. Section 7423 is added to the Business and Professions Code, to read:

7423. The amounts of the fees required by this chapter relating to licenses for individual practitioners are as follows:

(a) (1) Cosmetologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) A cosmetologist initial license fee shall not be more than fifty dollars ($50).

(b) (1) An esthetician application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) An esthetician initial license fee shall not be more than forty dollars ($40).

(c) (1) A manicurist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) A manicurist initial license fee shall not be more than thirty-five dollars ($35).

(d) (1) A barber application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) A barber initial license fee shall be not more than fifty dollars ($50).

(e) (1) An electrologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) An electrologist initial license fee shall be not more than fifty dollars ($50).

(f) An apprentice application and license fee shall be not more than twenty-five dollars ($25).

(g) The license renewal fee for individual practitioner licenses that are subject to renewal shall be not more than fifty dollars ($50).

(h) Notwithstanding Section 163.5 the license renewal delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal.

(i) Any preapplication fee shall be established by the board in an amount sufficient to cover the costs of processing and administration of the preapplication.

SEC. 79. Section 7423.5 of the Business and Professions Code is repealed.

SEC. 80. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if

authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision

of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The Chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that

the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 81. Section 3 of Chapter 859 of the Statutes of 2001 is repealed.

SEC. 82. Section 4 of Chapter 859 of the Statutes of 2001 is repealed.

CHAPTER 789

An act to amend Sections 144, 473.1, 473.2, 473.3, 2001, 2020, 2099.5, 2153.5, 2220.1, 2531, 3010.1, 3014.6, 6732, 6732.3, 6732.4, and 7153.1 of, and to add Chapter 2 (commencing with Section 474) to, and to add a chapter heading to, Division 1.2 of, the Business and Professions Code, to amend Section 94990 of, and to add Sections 94779.1, 94779.3, and 94779.4 to, the Education Code, to amend Section 9148.8 of, to add Article 8.5 (commencing with Section 9148.50) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of, and to repeal Section 9148.10 of, the Government Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to professions and vocations.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.

(11) Respiratory Care Board of California.

(12) Hearing Aid Dispensers Advisory Commission.

(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.

(c) The provisions of paragraphs (24) and (25) of subdivision (b) shall become operative on July 1, 2004.

SEC. 2. A chapter heading is added to Division 1.2 of the Business and Professions Code, immediately preceding Section 473, to read:

CHAPTER 1. REVIEW OF BOARDS UNDER THE DEPARTMENT OF CONSUMER AFFAIRS

SEC. 3. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to become inoperative and to be repealed on a specified date as provided by the specific act relating to the board.

(b) The Bureau for Postsecondary and Vocational Education. For purposes of this chapter, ''board'' includes the bureau.

(c) The Cemetery and Funeral Bureau.

SEC. 4. Section 473.2 of the Business and Professions Code is amended to read:

473.2. All boards to which this chapter applies shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the Joint Legislative Sunset Review Committee no later than 22 months before that board shall become inoperative. The analysis and report shall include, at a minimum, all of the following:

(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.

(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.

(c) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

(d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.

(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

SEC. 5. Section 473.3 of the Business and Professions Code is amended to read:

473.3. (a) Prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the Joint Legislative Sunset Review Committee shall, during the interim recess preceding the date upon which a board becomes inoperative, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

(d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of

the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The committee shall evaluate and review the effectiveness and efficiency of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

SEC. 6. Chapter 2 (commencing with Section 474) is added to Division 1.2 of the Business and Professions Code, to read:

CHAPTER 2. REVIEW OF OTHER STATE BOARDS

474. The Joint Legislative Sunset Review Committee established pursuant to Section 473 shall review all state boards as defined in Section 9148.2 of the Government Code, other than boards subject to review pursuant to Chapter 1 (commencing with Section 473), every four years or over another time period as determined by the committee.

474.1. Prior to recommending the termination, continuation, or reestablishment of any board or any of the state board's functions, the Joint Legislative Sunset Review Committee shall hold public hearings to receive testimony from the board involved and the public. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board.

474.2. All state boards to which this chapter applies shall prepare an analysis and submit a report to the Joint Legislative Sunset Review Committee not later than 22 months before that state board is scheduled to be reviewed by the committee. The analysis and report shall include, at a minimum, all of the following:

(a) A comprehensive statement of the state board's mission, goals, objectives, and legal jurisdiction in protecting the health, safety, and welfare of the public.

(b) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

(c) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

(d) A complete cost-benefit analysis of the board's operation for each of the four years preceding the date of the report or over a time period specified by the committee.

474.3. (a) The Joint Legislative Sunset Review Committee shall evaluate and determine whether a state board as defined in Section

9148.2 of the Government Code, other than a board, subject to review pursuant to Chapter 1 (commencing with Section 473), has demonstrated a public need for its continued existence based on, but not limited to, the following factors and minimum standards of performance:

(1) Whether the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial creation of the state board have changed.

(3) If the state board is necessary, whether existing statutes and regulations establish the most effective regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(4) Whether the state board operates and enforces its responsibilities in the public interest and whether its mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(5) Whether an analysis of the state board indicates that it performs its statutory duties efficiently and effectively.

(6) Whether the composition of the state board adequately represents the public interest and whether it encourages public participation in its decisions rather than participation only by the entities it regulates or advises.

(7) Whether the state board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(8) Whether administrative and statutory changes are necessary to improve the state board operations to enhance the public interest.

(b) The Joint Legislative Sunset Review Committee shall consider the appropriateness of eliminating and consolidating responsibilities between state boards.

(c) Nothing in this section precludes any state board or, if requested by the Joint Legislative Sunset Review Committee, the Legislative Analyst's Office, from submitting other appropriate information to the Joint Legislative Sunset Review Committee.

474.4. The Joint Legislative Sunset Review Committee shall meet to vote on final recommendations. A final report shall be completed by the committee and made available to the public and the Legislature. The report shall include final recommendations of the committee and whether each board or function shall be terminated, or continued, and whether its functions should be revised or consolidated with those of

other state boards. If the committee deems it advisable, the report may include proposed bills to carry out its recommendations.

SEC. 7. 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, 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. 8. 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, 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. 9. Section 2099.5 of the Business and Professions Code is amended to read:

2099.5. Notwithstanding any other provision of law, an originating license for an osteopathic physician's and surgeon's certificate issued by the Osteopathic Medical Board of California shall require a written examination that is either prepared or selected by the Osteopathic Medical Board of California. The written examination shall include osteopathic principles and practices and all applicable provisions of

Article 4 (commencing with Section 2080). An applicant shall successfully complete the written examination, as determined by the board.

SEC. 10. Section 2153.5 of the Business and Professions Code is amended to read:

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 that the board determines constitutes evidence of a pattern of negligence or incompetence.

SEC. 11. Section 2220.1 of the Business and Professions Code is amended 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 September 1, 2004, and be available to make oral reports 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 September 1, 2005. The final report shall include final findings and conclusions on the topics addressed in the initial report submitted by the monitor pursuant to subdivision (d).

(g) This section shall become inoperative on January 1, 2006, 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. 12. 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, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2007, deletes or extends the inoperative and repeal dates.

SEC. 13. Section 3010.1 of the Business and Professions Code is amended 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, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 14. Section 3014.6 of the Business and Professions Code is amended 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, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 15. Section 6732 of the Business and Professions Code is amended to read:

6732. It is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title ''professional engineer,'' ''licensed engineer,'' ''registered engineer,'' or ''consulting engineer,'' or any of the following branch titles: ''agricultural engineer,'' ''chemical engineer,'' ''civil engineer,'' ''control system engineer,'' ''electrical engineer,'' ''fire protection engineer,'' ''industrial engineer,'' ''mechanical engineer,'' ''metallurgical engineer,'' ''nuclear engineer,'' ''petroleum engineer,'' or ''traffic engineer,'' or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter.

SEC. 16. Section 6732.3 of the Business and Professions Code is amended to read:

6732.3. (a) Any person who has received from the board a registration or license in corrosion, manufacturing, quality, or safety engineering, and who holds a valid registration or license to practice professional engineering under this chapter, may continue to use the branch title of the branch in which the professional engineer is legally registered. A person holding a registration in corrosion, manufacturing, quality, or safety engineering is subject to the registration or license renewal provisions of this chapter.

(b) The professional engineer also may continue to use the title of ''professional engineer,'' ''licensed engineer,'' ''registered engineer,'' or ''consulting engineer.''

SEC. 17. Section 6732.4 of the Business and Professions Code is amended to read:

6732.4. (a) Notwithstanding any other provision of law, any person who has applied for registration as a corrosion, quality, or safety

engineer, and who has completed the written examination in one or more of these branch titles prior to January 1, 1999, shall be issued a registration in the branch title for which the applicant was examined, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a corrosion, quality, or safety engineer on or after January 1, 1999.

(b) Notwithstanding any other provision of law, any person who has applied for registration as a manufacturing engineer, and who has completed the written examination for this branch title prior to January 1, 2004, shall be issued a registration as a manufacturing engineer, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a manufacturing engineer on or after January 1, 2004.

SEC. 18. Section 7153.1 of the Business and Professions Code is amended to read:

7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.

(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting criminal history record checks. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on July 1, 2004.

SEC. 19. Section 94779.1 is added to the Education Code, to read:

94779.1. (a) The bureau shall work together with the staff of the Joint Legislative Sunset Review Committee, along with representatives of regulated institutions, the California Postsecondary Education Commission, the California Student Aid Commission, students, and other interested parties to revise this chapter to streamline its provisions and eliminate contradictions, redundancies, ambiguities, conflicting provisions, and unnecessary provisions, including consideration of having accreditation by the United States Department of Education approved regional accrediting bodies replace some of the bureau's approval requirements of degree-granting institutions, educational

programs, and instructors. In addition, the bureau, in conjunction with these various entities, shall evaluate the provisions of this chapter to determine what additional changes are advisable to improve the effectiveness of the state's regulation of private postsecondary and vocational education, including, but not limited to, the need to regulate out-of-state postsecondary institutions that offer educational programs to California students via the Internet and the feasibility of that regulation, and the type and timeliness of information required to be provided to the bureau.

(b) The bureau shall objectively assess the cost of meeting its statutory obligations, determine the staffing necessary to meet those obligations, determine whether the current fee structure allows for collection of revenue sufficient to support the necessary staffing, and report that information to the Director of Consumer Affairs and the Joint Legislative Sunset Review Committee by October 1, 2004.

(c) The bureau shall continue to make additional improvements to its data collection and dissemination systems so that it will provide improved reporting of information regarding the private postsecondary and vocational education sector, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, and collection of fees among other information necessary to serve the bureau's wide-ranging data management needs effectively.

SEC. 20. Section 94779.3 is added to the Education Code, to read:

94779.3. (a) The bureau shall establish an expanded outreach program for prospective and current private postsecondary and vocational education students and high school students, to provide them with information on how best to select postsecondary or vocational schools, how to enter into contracts and student enrollment agreements, how to protect themselves in the postsecondary and vocational education marketplace, and how to contact the bureau for assistance if problems arise.

(b) Notwithstanding subdivision (a), the bureau may not establish an expanded outreach program pursuant to that subdivision until the occurrence of the following events:

(1) The bureau reports to the Director of Consumer Affairs and to the Joint Legislative Sunset Review Committee on its fee structure and revenues pursuant to subdivision (b) of Section 94779.1.

(2) The Director of Consumer Affairs makes findings after submittal of that report that the bureau has sufficient revenues to meet its current obligations and that the cost of an outreach program will not further jeopardize the bureau's ability to meet those obligations.

(3) The director reports those findings to the committee.

SEC. 21. Section 94779.4 is added to the Education Code, to read:

94779.4. The bureau shall report to the Legislature, no later than October 1, 2003, on its progress in accomplishing the corrective actions necessary to resolve the deficiencies found in the audit performed by the department's Internal Audit Office, and any remaining deficiencies found in the 2000 audit by the Bureau of State Audits. In particular, the bureau shall report on the status and timeliness of its complaint and enforcement, and application and renewal processes and procedures, the condition of the Student Tuition Recovery Fund and the status of any claims thereon, the status and timeliness of its various approval or registration processes, the status and capabilities of its data processing and dissemination system, its outreach efforts to current and prospective private postsecondary and vocational education students, and any recommendations for improvement to its operations, including any recommendations regarding revisions to this chapter.

SEC. 22. Section 94990 of the Education Code is amended to read:

94990. The bureau is subject to the sunset review process conducted by the Joint Legislative Sunset Review Committee pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code. Notwithstanding that this chapter does not specify that it will become inoperative on a specified date, the analyses, reports, public hearings, evaluations, and determinations required to be prepared, conducted, and made pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code shall be prepared, conducted, and made in 2002 and every four years thereafter as long as this chapter is operative.

SEC. 23. Section 9148.8 of the Government Code is amended to read:

9148.8. (a) The Committee on Rules of either house of the Legislature, acting pursuant to a request from the chairperson of the appropriate policy committee, may direct the Joint Legislative Sunset Review Committee to evaluate a plan prepared pursuant to Section 9148.4 or 9148.6.

(b) Evaluations prepared by the Joint Legislative Sunset Review Committee pursuant to this section shall be provided to the respective Committee on Rules and the policy and fiscal committees of the Legislature pursuant to rules adopted by each committee for this purpose.

SEC. 24. Section 9148.10 of the Government Code is repealed.

SEC. 25. Article 8.5 (commencing with Section 9148.50) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 8.5. Legislative Review of State Boards

9148.50. The Legislature finds and declares all of the following:

(a) California's multilevel, complex governmental structure today contains more than 400 categories of administrative or regulatory boards, commissions, committees, councils, associations, and authorities.

(b) These administrative or regulatory boards, commissions, committees, councils, associations, and authorities have been established without any method of periodically reviewing their necessity, effectiveness, or utility.

(c) As a result, the Legislature and residents of California cannot be assured that existing or proposed administrative or regulatory boards, commissions, committees, councils, associations, and authorities adequately protect the public health, safety, and welfare.

9148.51. (a) It is the intent of the Legislature that all existing and proposed state boards be subject to review every four years to evaluate and determine whether each has demonstrated a public need for its continued existence in accordance with enumerated factors and standards as set forth in Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code.

(b) In the event that any state board becomes inoperative or is repealed in accordance with the act that added this section, any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that state board is inoperative or repealed.

(c) Any provision of law authorizing the appointment of an executive officer by a state board subject to the review described in Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code, or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable state board is inoperative or repealed.

(d) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any state board shall be a separate bill for that purpose.

9148.52. (a) The Joint Legislative Sunset Review Committee established pursuant to Section 473 of the Business and Professions Code shall review all state boards, as defined in Section 9148.2, other than a board subject to review pursuant to Chapter 1 (commencing with Section 473) of Division 1.2 of the Business and Professions Code, every four years.

(b) The committee shall evaluate and make determinations pursuant to Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code.

SEC. 26. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for

whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or

administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, ''authorized governmental agency'' means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, ''reciprocal agreement'' means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of

a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

CHAPTER 790

An act to add Section 12012.35 to the Government Code, relating to tribal gaming.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 12012.35 is added to the Government Code, to read:

12012.35. (a) The tribal-state gaming compact entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the La Posta Band of Diegueño Mission Indians of the La Posta Indian Reservation, California, executed on September 9, 2003, is hereby ratified.

(b) The tribal-state gaming compact entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the Santa Ysabel Band of Diegueño Mission Indians of the Santa Ysabel Reservation, California, executed on September 8, 2003, is hereby ratified.

CHAPTER 791

An act to add Section 758.5 to the Insurance Code, relating to auto insurance.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 758.5 is added to the Insurance Code, to read:

758.5. (a) No insurer shall require that an automobile be repaired at a specific automotive repair dealer, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) No insurer shall suggest or recommend that an automobile be repaired at a specific automotive repair dealer unless either of the following applies:

(A) A referral is expressly requested by the claimant.

(B) The claimant has been informed in writing of the right to select the automotive repair dealer.

(2) If the recommendation is accepted by the claimant, the insurer shall cause the damaged vehicle to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy or as is otherwise allowed by law. If the recommendation of an automotive repair dealer is done orally, and if the oral recommendation is accepted by the claimant, the insurer shall provide the information contained in this paragraph, as noted in the statement below, to the claimant at the time the recommendation is made. The insurer shall send the written notice required by this paragraph within five calendar days from the oral recommendation. The written notice required by this paragraph shall include the following statement plainly printed in no less than 10-point type:

''WE ARE PROHIBITED BY LAW FROM REQUIRING THAT REPAIRS BE DONE AT A SPECIFIC AUTOMOTIVE REPAIR DEALER. YOU ARE ENTITLED TO SELECT THE AUTO BODY REPAIR SHOP TO REPAIR DAMAGE COVERED BY US. WE HAVE RECOMMENDED AN AUTOMOTIVE REPAIR DEALER THAT WILL REPAIR YOUR DAMAGED VEHICLE. IF YOU AGREE TO USE OUR RECOMMENDED AUTOMOTIVE REPAIR DEALER, WE WILL CAUSE THE DAMAGED VEHICLE TO BE RESTORED TO ITS CONDITION PRIOR TO THE LOSS AT NO ADDITIONAL COST TO YOU OTHER THAN AS STATED IN THE INSURANCE POLICY OR AS OTHERWISE ALLOWED BY LAW. IF YOU EXPERIENCE A PROBLEM WITH THE REPAIR OF YOUR VEHICLE, PLEASE CONTACT US IMMEDIATELY FOR ASSISTANCE.''

(c) Except as provided in subparagraph (A) of paragraph (1) of subdivision (b), after the claimant has chosen an automotive repair dealer, the insurer shall not suggest or recommend that the claimant select a different automotive repair dealer.

(d) Any insurer that, by the insurance contract, suggests or recommends that an automobile be repaired at a particular automotive repair dealer shall also do both of the following:

(1) Prominently disclose the contractual provision in writing to the insured at the time the insurance is applied for and at the time the claim is acknowledged by the insurer.

(2) If the claimant elects to have the vehicle repaired at the shop of his or her choice, the insurer shall not limit or discount the reasonable repair costs based on charges that would have been incurred had the vehicle been repaired by the insurer's chosen shop.

(e) For purposes of this section, ''claimant'' means a first-party claimant or insured, or a third-party claimant who asserts a right of recovery for automotive repairs under an insurance policy.

(f) The powers of the commissioner to enforce this section shall include those granted in Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1.

CHAPTER 792

An act to add Section 851.90 to the Penal Code, relating to drug diversion.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 851.90 is added to the Penal Code, to read:

851.90. (a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(4) The defendant may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) Sealing orders made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the defendant concerning the defendant's eligibility for any statutorily authorized drug diversion or deferred entry of judgment program in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice; the court shall advise a defendant that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by the department, as authorized by law.

CHAPTER 793

An act to amend Sections 65008, 65589.5, and 65914 of, and to add Section 65589.4 to, the Government Code, to amend Sections 50650.4 and 50650.5 of the Health and Safety Code, and to amend Section 30604 of the Public Resources Code, relating to housing.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 65008 of the Government Code is amended to read:

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the individual or group of individuals. For purposes of this section, both of the following definitions apply:

(A) ''Familial status'' as defined in Section 12955.2.

(B) ''Disability'' as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing.

(B) Because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the owners or intended occupants of the residential development or emergency shelter.

(C) Because the development or shelter is intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed

complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter because of, in whole or in part, (A) the method of financing or (B) the occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of low and moderate income.

(c) For the purposes of this section, ''persons and families of middle income'' means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income,

or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) ''Residential development,'' as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

SEC. 2. Section 65589.4 is added to the Government Code, to read:

65589.4. (a) A multifamily residential housing project shall be a permitted use not subject to a conditional use permit on any parcel zoned for multifamily housing if it satisfies the requirements of subdivision (b) and either of the following:

(1) The project satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The project meets all of the following criteria:

(A) The project is subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the project may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.

(B) The project is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(C) The project is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction within five years of the date the application for the project was deemed complete:

(i) A general plan.

(ii) A revision or update to the general plan that includes at least the land use and circulation elements.

(iii) An applicable community plan.

(iv) An applicable specific plan.

(D) The project consists of not more than 100 residential units with a minimum density of not less than 12 units per acre.

(E) The project is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with 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.

(F) The project is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the project shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the project shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

SEC. 3. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval

of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and 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. As used in this paragraph, a ''specific, adverse impact'' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health

or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) ''Feasible'' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) ''Housing development project'' means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, ''neighborhood commercial'' means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) ''Housing for very low, low-, or moderate-income households'' means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) ''Area median income'' means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) ''Neighborhood'' means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) ''Disapprove the development project'' includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a ''specific, adverse impact'' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned

its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(*l*) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

SEC. 4. Section 65914 of the Government Code is amended to read:

65914. (a) In any civil action or proceeding, including, but not limited to, an action brought pursuant to Section 21167 of the Public Resources Code, against a public entity that has issued planning, subdivision, or other approvals for a housing development, to enjoin the carrying out or approval of a housing development or to secure a writ of mandate relative to the approval of, or a decision to carry out the housing development, the court, after entry of final judgment and the time to appeal has elapsed, and after notice to the plaintiff or plaintiffs, may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing if it finds all of the following:

(1) The housing development meets or exceeds the requirements for low- and moderate-income housing as set forth in Section 65915.

(2) The action was frivolous and undertaken with the primary purpose of delaying or thwarting the low- or moderate-income nature of the housing development or portions thereof.

(3) The public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and

moderate-income housing making application for costs under this section has prevailed on all issues presented by the pleadings and the public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing actively, through counsel or otherwise, took part on a continuing basis in the defense of the lawsuit.

(4) A demand for a preliminary injunction was made by the plaintiff and denied by a court of competent jurisdiction, or the action or proceeding was dismissed as a result of a motion for summary judgment by any defendant, and the denial or dismissal was not reversed on appeal.

(b) In any appeal of any action described in subdivision (a), the reviewing court may award all reasonably incurred costs of suit, including attorney's fees, to the prevailing public entity or nonprofit housing corporation that is the real party in interest and the permit applicant of the low- and moderate-income housing if the court reviews and upholds the trial court's findings with respect to paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Nothing in this section shall be construed to limit the application of any other remedies or rights provided under law.

SEC. 5. Section 50650.4 of the Health and Safety Code is amended to read:

50650.4. To be eligible to receive a grant or loan, local public agencies or nonprofit corporations shall demonstrate sufficient organizational stability and capacity to carry out the activity for which they are requesting funds, including, where applicable, the capacity to manage a portfolio of individual loans over an extended time period. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department. In administering the CalHome program, the department may permit local agencies and nonprofit corporations to apply their own underwriting guidelines when evaluating CalHome rehabilitation loan applications, following prior review and approval of those guidelines by the department. The local agency or nonprofit corporation may not subsequently alter its underwriting guidelines with respect to the use of CalHome funds without review and approval by the department. In allocating funds, the department shall utilize a competitive application process, using weighted evaluation criteria, including, but not limited to, the extent that the program or project utilizes volunteer or self-help labor, trains youth and young adults in construction skills, creates balanced communities, involves community participation, or whether the program or project contributes toward community revitalization. To the extent feasible, the application process shall ensure a reasonable geographic distribution of funds.

SEC. 6. Section 50650.5 of the Health and Safety Code is amended to read:

50650.5. For the purposes of this chapter:

(a) Mutual housing and limited equity cooperative housing shall be deemed to be forms of homeownership and developments of those types of housing, as defined in subdivision (b), shall be eligible to receive assistance under the CalHome program. The department may require that mutual housing or limited equity cooperative applicants not simultaneously apply for and receive funding through the department's rental housing programs for the same projects for which CalHome assistance is sought. For mutual housing and limited equity cooperative projects, all of the following shall apply:

(1) Program funds shall be used for permanent financing only.

(2) The department shall enter into a regulatory agreement limiting occupant incomes, occupancy charges, and share purchase terms for 55 years.

(3) Notwithstanding Section 50650.3, program assistance shall be provided in the form of a deferred payment loan.

(b) As used in this section, ''mutual housing development'' means a housing development owned and sponsored by a nonprofit corporation or a limited partnership in which the nonprofit corporation is the sole general partner, and all of the following requirements are met:

(1) The nonprofit corporation is exempt from taxes under Section 501(c)(3) of the Internal Revenue Code or subdivision (d) of Section 23701 of the Revenue and Taxation Code.

(2) The nonprofit corporation has as one of its principal purposes the advancement of mutual housing.

(3) A majority of the board of directors of the nonprofit corporation sponsor are residents or former residents of developments sponsored by the nonprofit corporation.

(4) The nonprofit corporation agrees to assist the residents of the development in setting up a resident council, and the operating budget for the development provides for ongoing financial support to allow the resident council to carry out its activities.

(c) Lower income participants in a qualified mutual housing development that is assisted pursuant to this chapter shall not be required to have a vested ownership interest in the property.

SEC. 7. Section 30604 of the Public Resources Code is amended to read:

30604. (a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local

government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding that sets forth the basis for that conclusion.

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

(d) No development or any portion thereof that is outside the coastal zone shall be subject to the coastal development permit requirements of this division, nor shall anything in this division authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.

(e) No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property on, which the proposed development is to be located, unless the public agency has been specifically authorized to acquire the property and there are funds available, or funds that could reasonably be expected to be made available within one year, for the acquisition. If a permit has been denied for that reason and the property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for the development on grounds that the property, or adjacent property, is to be acquired by a public agency when the application for such a development is resubmitted.

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density

sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

SEC. 8. The Department of Housing and Community Development may implement the changes made by this act to Sections 50650.4 and 50650.5 of the Health and Safety Code for 24 months using guidelines, during which time those guidelines shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code).

CHAPTER 794

An act to add Section 20676 to the Public Contract Code, and to amend Sections 2207, 2717, and 2774 of the Public Resources Code, relating to mining.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 20676 is added to the Public Contract Code, to read:

20676. Operators of surface mines in this state, whose operations are not identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code, may not sell that California mined material to a local agency.

SEC. 2. Section 2207 of the Public Resources Code is amended to read:

2207. (a) The owner, lessor, lessee, agent, manager, or other person in charge of any mining operation of whatever kind or character within the state shall forward to the director annually not later than a date established by the director, upon forms furnished by the board, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all

orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Bureau of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey $7^1/_2$-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in paragraphs (1) to (14), inclusive, of subdivision (a).

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (b), (c), (d), or (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h)

of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the director and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed four thousand dollars ($4,000) annually and may not be less than one hundred dollars ($100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005–06 fiscal year and annually thereafter.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the 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 any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of three million five hundred thousand dollars ($3,500,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005–06 fiscal year and annually thereafter. If the

director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) In addition to reporting fees, the board shall collect five dollars ($5) per ounce of gold and ten cents ($0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Sections 2796.5 and 2797.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars ($100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of $1^1/_2$ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, ''mining operation'' has the same meaning as ''surface mining operation'' as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, ''mining operation'' may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral

commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (g) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

SEC. 3. Section 2717 of the Public Resources Code is amended to read:

2717. (a) The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Section 10295.5 of the Public Contract Code, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state agency, a list identifying all of the following:

(1) Surface mining operations for which a report is required and has been submitted pursuant to Section 2207 that indicates all of the following:

(A) The reclamation plan and financial assurances have been approved pursuant to this chapter.

(B) Compliance with state reclamation standards developed pursuant to Section 2773.

(C) Compliance with the financial assurance guidelines developed pursuant to Section 2773.1.

(D) The annual reporting fee has been submitted to the Department of Conservation.

(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.

(3) Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured.

SEC. 4. Section 2774 of the Public Resources Code is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim

management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised. In particular, if the lead agency's position is at variance with any of the recommendations made, or objections raised, in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting

agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity may not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 795

An act relating to student financial aid.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. (a) The Student Aid Commission shall convene an existing advisory committee to review the existing formula for calculating high school grade point averages under the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Act. The commission shall report the findings and recommendations of the committee to the Legislature, as part of the report required pursuant to Section 69437.7 of the Education Code, prior to December 31, 2004. Members of the committee shall include, at a minimum, representatives of the high school community, as well as representatives of the California Community Colleges, the California State University, the University of California, the Association of Independent California Colleges and Universities, the California Postsecondary Education Commission, and the Superintendent of Public Instruction.

(b) The Student Aid Commission shall review the issue of whether the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Act provides adequate resources for nontraditional, returning, and older adult students. The commission shall report its findings and recommendations on this issue to the Legislature, as part of the report required pursuant to Section 69437.7 of the Education Code, prior to December 31, 2004.

CHAPTER 796

An act to amend Sections 853, 7360, 7361, 7362, and 7363 of, and to repeal Section 7360.1 of, the Fish and Game Code, relating to the Department of Fish and Game, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 853 of the Fish and Game Code is amended to read:

853. The director may deputize any employee of the department to check persons for licenses required under Section 7145 and to enforce any violation of that section. Before a person is deputized pursuant to this section for the first time, the person shall have satisfactorily completed a training course meeting the minimum standards of, and comparable to, the training for ''level III reserve'' as set forth in the regulations of the Commission on Peace Officer Standards and Training. Any person, who is deputized for this limited purpose pursuant to this section, may not enforce any other provision of this code, and is not a peace officer subject to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

SEC. 2. Section 7360 of the Fish and Game Code is amended to read:

7360. (a) A person shall not sport fish in the tidal waters of the San Francisco Bay Delta and the main stem of the Sacramento and San Joaquin Rivers, including major tributaries, below the most downstream dam, unless he or she first obtains, in addition to a valid California sport fishing license and any applicable stamp or validation issued pursuant to Section 7149 or 7149.05, a Bay-Delta Sport Fishing Enhancement Stamp or validation and affixes that stamp or validation to his or her valid sport fishing license.

(b) The commission may modify, by regulation, the geographic parameters specified in subdivision (a).

(c) The department or an authorized license agent shall issue a Bay-Delta Sport Fishing Enhancement Stamp or validation upon payment of a base fee of five dollars ($5), in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713.

SEC. 3. Section 7360.1 of the Fish and Game Code is repealed.

SEC. 4. Section 7361 of the Fish and Game Code is amended to read:

7361. Fees received by the department pursuant to Section 7360 shall be deposited in a separate account in the Fish and Game Preservation Fund. The department shall expend the funds in that account for the long-term, sustainable benefit of the primary bay-delta sport fisheries, including, but not limited to, striped bass, sturgeon, black bass, halibut, salmon, surf perch, steelhead trout, and American shad. Funds shall be expended to benefit sport fish populations, sport fishing opportunities, and anglers within the geographic parameters established in Section 7360, and consistent with state and federal Endangered Species Act requirements and applicable commission policies. It is the intent of the Legislature that these funds be used to augment, not replace, funding that would otherwise be allocated to bay-delta sport fisheries from the sale of fishing licenses, the California Bay-Delta Authority, or other federal, state, or local funding sources.

SEC. 5. Section 7362 of the Fish and Game Code is amended to read:

7362. (a) The director shall appoint a Bay-Delta Sport Fishing Enhancement Stamp Fund Advisory Committee, consisting of nine members. The committee members shall be selected from names of persons submitted by anglers and associations representing bay-delta anglers of this state and shall serve at the discretion of the director for terms of not more than four years. The director shall appoint persons to the committee who possess experience in subjects with specific value to the committee and shall attempt to balance the perspective of different anglers .

(b) The advisory committee shall recommend to the department projects and budgets for the expenditure of revenue received pursuant to Section 7360. The department shall give full consideration to the committee's recommendations.

(c) The department shall submit to the committee, at least annually, an accounting of funds derived from the Bay-Delta Sport Fishing Enhancement Stamps and validations, including the number of stamps and validations sold, funds generated and expended, and the status of programs funded pursuant to this article. In addition, the department shall report, at least annually, to the committee on the status of projects undertaken with funds from that stamp or validation, including reporting

the department's reasoning in cases where committee recommendations are not followed.

SEC. 6. Section 7363 of the Fish and Game Code is amended to read:

7363. 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. 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 797

An act to amend Sections 4903 and 4904 of the Labor Code, and to amend Sections 140.5, 984, 1143, 2601, 2613, 2656, 2676, 2679, 2707.5, 2708, 2708.1, 2709, 2714, 3012, 3253, 3254, 3300, 3301, 3302, 3303, and 3305 of, to amend the heading of Chapter 7 (commencing with Section 3300) of Part 2 of Division 1 of, and to add Sections 3302.1, 3303.1, and 3306 to, the Unemployment Insurance Code, relating to disability compensation.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 4903 of the Labor Code is amended to read:

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims

for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600) and, to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2.

(c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court shall be credited as provided in Section 695.221 of the Code of Civil Procedure.

(f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of family temporary disability insurance benefits that have been paid to the injured employee pursuant to the Unemployment Insurance Code for the same day or days for which that employee receives, or is entitled to receive, temporary total disability indemnity payments under this division, provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(i) The amount of indemnification granted by the California Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(j) The amount of compensation, including expenses of medical treatment, and recoverable costs that have been paid by the Asbestos Workers' Account pursuant to the provisions of Chapter 11 (commencing with Section 4401) of Part 1.

SEC. 2. Section 4904 of the Labor Code is amended to read:

4904. (a) If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien, the claim is a lien against any amount thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board.

(b) (1) In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same injury or illness or temporary disability indemnity, or both, is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code.

(2) In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made.

(3) In determining the amount of lien to be allowed for family temporary disability insurance benefits under subdivision (h) of Section 4903, the appeals board shall allow the lien in the amount of benefits that it finds were paid for the same day or days for which an award of compensation for temporary total disability is made and for which the employer has not reimbursed the Employment Development

Department pursuant to Section 2629.1 of the Unemployment Insurance Code.

(c) In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f), (g), or (h) of Section 4903. If the lien claimant objects to the amount proposed for payment of its lien under a compromise and release settlement or stipulation, the appeals board shall determine the extent of the lien claimant's entitlement to reimbursement on its lien and make and file findings on all facts involved in the controversy over this issue in accordance with Section 5313. The appeals board may approve a compromise and release agreement or stipulation which proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f), (g), or (h) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed. The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

(d) Where unemployment compensation disability benefits, including family temporary disability insurance benefits, have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision, or award is pending, or has been granted, the appeals board shall determine and allow a final amount on the lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order, decision, or award.

(e) The appeals board may not be prohibited from approving a compromise and release agreement on all other issues and deferring to subsequent proceedings the determination of a lien claimant's entitlement to reimbursement if the defendant in any of these proceedings agrees to pay the amount subsequently determined to be due under the lien claim.

SEC. 3. Section 140.5 of the Unemployment Insurance Code is amended to read:

140.5. ''Unemployment compensation disability benefits'' or ''disability benefits'' refers to money payments payable under Part 2 (commencing with Section 2601) to either of the following:

(a) An eligible unemployed individual with respect to his or her wage losses due to unemployment as a result of illness or other disability, resulting in that individual being unavailable or unable to work.

(b) An eligible individual with respect to his or her wage losses who is unable to work due to caring for a seriously ill or injured family member or bonding with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

SEC. 4. Section 984 of the Unemployment Insurance Code, as amended by Section 1 of Chapter 901 of the Statutes of 2002, is amended to read:

984. (a) (1) Each worker shall pay worker contributions at the rate determined by the director pursuant to this section with respect to wages, as defined by Sections 926, 927, and 985. On or before October 31 of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly all employers of employees covered for disability insurance of the rate.

(2) (A) Except as provided in paragraph (3), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(B) The director shall increase the rate of worker contributions by .08 percent for the 2004 and 2005 calendar years to cover the initial cost of family temporary disability insurance benefits provided in Chapter 7 (commencing with Section 3300) of Part 2.

(3) The rate of worker contributions shall not exceed 1.5 percent or be less than 0.1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

(b) Worker contributions required under Sections 708 and 708.5 shall be at a rate determined by the director to reimburse the Disability Fund for unemployment compensation disability benefits paid and estimated to be paid to all employers and self-employed individuals covered by those sections. On or before November 30th of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of contributions for the succeeding calendar year for

all employers and self-employed individuals covered under Sections 708 and 708.5 and shall notify promptly the employers and self-employed individuals of the rate. The rate shall be determined by dividing the estimated benefits and administrative costs paid in the prior year by the product of the annual remuneration deemed to have been received under Sections 708 and 708.5 and the estimated number of persons who were covered at any time in the prior year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. The rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in the funds contributed pursuant to Sections 708 and 708.5. Estimates made pursuant to this subdivision may be made on the basis of statistical sampling, or another method determined by the director.

(c) The director's action in determining a rate under this section shall not constitute an authorized regulation.

(d) (1) Notwithstanding subdivision (a), and except as provided in paragraph (2), the director may, at his or her discretion, increase or decrease, by not to exceed 0.1 percent, the rate of worker contributions determined pursuant to subdivision (a), up to a maximum worker contribution rate of 1.5 percent, if he or she determines the adjustment is necessary to reimburse the Disability Fund for disability benefits paid or estimated to be paid to individuals covered by this section or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.

(2) Notwithstanding paragraph (1), for the 2004, 2005, and 2006 calendar years, the director may not decrease the rate of worker contributions, regardless of whether the director determines that a decrease is necessary to prevent the accumulation of funds in excess of those needed to maintain the adequacy of the Disability Fund during program implementation.

SEC. 5. Section 1143 of the Unemployment Insurance Code is amended to read:

1143. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain disability insurance benefits, including family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of this article, the provisions of Article 9 (commencing with Section 1176) with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

SEC. 6. Section 2601 of the Unemployment Insurance Code, as amended by Section 2 of Chapter 901 of the Statutes of 2002, is amended to read:

2601. The purpose of this part is to compensate in part for the wage loss sustained by any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child, and to reduce to a minimum the suffering caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens that fall on the unemployed worker and his or her family.

SEC. 7. Section 2613 of the Unemployment Insurance Code, as amended by Section 3 of Chapter 901 of the Statutes of 2002, is amended to read:

2613. (a) The Director of Employment Development shall develop and maintain a program of education concerning disability insurance rights and benefits.

(b) The director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to sickness, injury, or pregnancy. The notice shall be given by every employer to each new employee hired on or after June 1, 1988, and to each employee leaving work due to pregnancy or nonoccupational sickness or injury on or after July 1, 1989.

(c) Commencing January 1, 2004, the director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member, or the employee's need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption. The notice shall also instruct the employee to provide notification of the reason for taking leave in a manner consistent with company policy. The notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member, or the need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

SEC. 8. Section 2656 of the Unemployment Insurance Code is amended to read:

2656. (a) An individual eligible to receive disability benefits who receives wages or regular wages from his or her employer during the period of his or her disability or period of family care leave shall be paid disability benefits for any seven-day week or partial week in an amount

not to exceed his or her maximum weekly amount which together with the wages or regular wages does not exceed his or her weekly wage, exclusive of wages paid for overtime work, immediately prior to the commencement of his or her disability or period of family care leave.

(b) For purposes of this section, to determine the wages or regular wages received by the eligible individual, the amount as stated by the individual shall be presumed to be accurate. This presumption is one affecting the burden of producing evidence.

(c) Except as provided in subdivision (g) of Section 3303, for purposes of periods of disability commencing on or after January 1, 1992, vacation pay is not considered wages for determining eligibility for disability benefits.

SEC. 9. Section 2676 of the Unemployment Insurance Code is amended to read:

2676. An individual who is disqualified from receiving unemployment compensation benefits under Sections 1256, 1257, 1260, 1261, and 1263 shall be presumed to be ineligible to receive disability benefits under this part for the same period or periods unless he or she establishes to the satisfaction of the director that he or she is suffering a bona fide illness or injury or claiming a period of family care leave and the director finds that there is good cause for paying disability benefits.

SEC. 10. Section 2679 of the Unemployment Insurance Code is amended to read:

2679. Notwithstanding any other provision of law, an individual who is otherwise eligible shall not be disqualified for benefits under this part for the day on which he or she or a family member, as defined in Chapter 7 (commencing with Section 3300), for whom the individual is providing care, died.

SEC. 11. Section 2707.5 of the Unemployment Insurance Code is amended to read:

2707.5. (a) The department may for good cause reconsider any determination provided for in this part prior to the filing of an appeal therefrom, or within 30 days after an appeal to an administrative law judge is filed. The department shall promptly notify the claimant of any reconsidered determination, and the claimant may appeal therefrom in the manner prescribed in Section 2707.2. The director shall be an interested party to any appeal.

(b) The department may for good cause reconsider any computation or recomputation provided for in this part within one year from the beginning date of the disability benefit period to which the notice of computation or recomputation relates, except that no recomputation may be considered with respect to any issue considered or under consideration in an appeal taken from a denial of recomputation. The

department shall promptly notify the claimant of the recomputation. The claimant may protest the accuracy of the recomputation as prescribed in Section 2707.4.

SEC. 12. Section 2708 of the Unemployment Insurance Code, as amended by Section 4 of Chapter 901 of the Statutes of 2002, is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

(B) ''Warrants the participation of the employee'' includes, but is not limited to, providing psychological comfort, and arranging ''third party'' care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) ''Physician'' has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) ''Practitioner'' means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is

shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

SEC. 13. Section 2708.1 of the Unemployment Insurance Code is amended to read:

2708.1. (a) Except as provided in subdivision (b), where an individual is entitled to receive unemployment compensation disability benefits reduced by the amount of temporary workers' compensation received for any day under Section 2629, it shall not be necessary that he or she obtain a certificate of a physician as required by subdivision (a) of Section 2708 to receive the reduced amount of disability benefits for that day, provided that the claimant submits evidence to the department of receipt of temporary disability benefits under a workers' compensation law for that day.

(b) This section does not apply to Chapter 7 (commencing with Section 3300).

SEC. 14. Section 2709 of the Unemployment Insurance Code is amended to read:

2709. If any individual in good faith adheres to the teachings of any bona fide church, sect, denomination or organization and in accordance with its principles depends for healing entirely upon prayer or spiritual means, no medical examination shall be required, but in lieu thereof the director may accept the certificate of a duly authorized and accredited practitioner of that bona fide church, sect, denomination or organization as to the disability of the claimant, or the serious health condition of the family member that warrants the care of the individual, for purposes of Chapter 7 (commencing with Section 3300) of Part 2, and the estimated duration of such disability, and no authorized regulation prescribing the manner of proof of illness, injury, or serious health condition shall discriminate against that individual.

SEC. 15. Section 2714 of the Unemployment Insurance Code is amended to read:

2714. All medical records of the department obtained under this part, except to the extent necessary for the proper administration of this part, or as provided elsewhere in law shall be confidential and shall not be published or be open to public inspection in any manner revealing the identity of the claimant or family member, or the nature or cause of his or her disability. Medical records that are disclosed shall be disclosed only pursuant to Section 1095, and shall remain confidential.

SEC. 16. Section 3012 of the Unemployment Insurance Code is amended to read:

3012. (a) Notwithstanding Section 13340 of the Government Code, all money in the Disability Fund is continuously appropriated for the purpose of providing disability benefits pursuant to this part, including the payment of refunds, credits, or judgments, and interest thereon, the payment of disability benefits to all eligible persons not covered exclusively by an approved voluntary plan, and the payment of the expenses of administration of this part and Section 17061 of the Revenue and Taxation Code by the department and the Franchise Tax Board. ''Eligible persons'' as used in this section, means those individuals who are covered by the Disability Fund at the time his or her disability benefit period commences, or whose employment has terminated or who is in noncovered employment at the time his or her disability benefit period commences, and who is otherwise eligible for benefits under this part.

(b) For the purpose of keeping a record of the payments to and the disbursements from the Disability Fund with respect to the payment of benefits to persons whose employment has terminated or who are in noncovered employment at the time his or her disability period commences, the director shall maintain the Unemployed Disabled Account in the Disability Fund. This account shall be credited with 12 percent of the product obtained by multiplying the rate of worker contributions as determined in Section 984, by the amount of the taxable wages paid to employees covered by voluntary plans for disability benefits for each calendar year. This account shall also be credited with an amount equal to 12 percent of the product obtained by multiplying the rate of worker contributions, as determined in Section 984, by the amount of the taxable wages paid to employees covered by the Disability Fund for each calendar year. This account shall be charged each calendar year with disbursements from the Disability Fund for the payment of benefits and the additional administrative costs of the payment of benefits to persons whose employment has terminated or who are in noncovered employment at the time his or her disability benefit period commences.

SEC. 17. Section 3253 of the Unemployment Insurance Code is amended to read:

3253. Except as provided in this part, an employee covered by an approved voluntary plan at the commencement of a disability benefit period shall not be entitled to benefits from the Disability Fund. Benefits payable to that employee shall be the liability of the approved voluntary plan under which the employee was covered at the commencement of the disability benefit period, regardless of any subsequent disabling condition which may occur during that disability benefit period. The Director of Employment Development shall prescribe authorized regulations to allow benefits to individuals simultaneously covered by one or more approved voluntary plans and the Disability Fund.

SEC. 18. Section 3254 of the Unemployment Insurance Code, as amended by Section 5 of Chapter 901 of the Statutes of 2002, is amended to read:

3254. The Director of Employment Development shall approve any voluntary plan, except one filed pursuant to Section 3255, as to which he or she finds that there is at least one employee in employment and all of the following exist:

(a) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625), including those provided for in Chapter 7 (commencing with Section 3300).

(b) The plan has been made available to all of the employees of the employer employed in this state or to all employees at any one distinct, separate establishment maintained by the employer in this state. ''Employees'' as used in this subdivision includes those individuals in partial or other forms of short-time employment and employees not in employment as the Director of Employment Development shall prescribe by authorized regulations.

(c) A majority of the employees of the employer employed in this state or a majority of the employees employed at any one distinct, separate establishment maintained by the employer in this state have consented to the plan.

(d) If the plan provides for insurance the form of the insurance policies to be issued have been approved by the Insurance Commissioner and are to be issued by an admitted disability insurer.

(e) The employer has consented to the plan and has agreed to make the payroll deductions required, if any, and transmit the proceeds to the plan insurer, if any.

(f) The plan provides for the inclusion of future employees.

(g) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the Director of Employment Development finds that the employer or a majority of its employees

employed in this state covered by the plan have given notice of withdrawal from the plan. The notice shall be filed in writing with the Director of Employment Development and shall be effective only on the anniversary of the effective date of the plan next following the filing of the notice, but in any event not less than 30 days from the time of the filing of the notice; except that the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal from the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of that law or change. If the plan is not withdrawn on the 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(h) The amount of deductions from the wages of an employee in effect for any plan shall not be increased on other than an anniversary of the effective date of the plan except to the extent that any increase in the deductions from the wages of an employee allowed by Section 3260 permits that amount to exceed the amount of deductions in effect.

(i) The approval of the plan or plans will not result in a substantial selection of risks adverse to the Disability Fund.

SEC. 19. The heading of Chapter 7 (commencing with Section 3300) of Part 2 of Division 1 of the Unemployment Insurance Code is amended to read:

CHAPTER 7. PAID FAMILY LEAVE

SEC. 20. Section 3300 of the Unemployment Insurance Code is amended to read:

3300. The Legislature finds and declares all of the following:

(a) It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance benefits has intensified as the participation of both parents in the workforce has increased, and the number of single parents in the workforce has grown. The need for partial wage replacement for workers taking family care leave will be exacerbated as the population of those needing care, both children and parents of workers, increases in relation to the number of working age adults.

(b) Family Temporary Disability Insurance shall be known as Paid Family Leave.

(c) Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by increasing worker productivity and reducing employee turnover.

(d) The federal Family and Medical Leave Act (FMLA) and California's Family Rights Act (CFRA) entitle eligible employees working for covered employers to take unpaid, job-protected leave for up to 12 workweeks in a 12-month period. Under the FMLA and the CFRA, unpaid leave may be taken for the birth, adoption, or foster placement of a new child; to care for a seriously ill child, parent, or spouse; or for the employee's own serious health condition.

(e) State disability insurance benefits currently provide wage replacement for workers who need time off due to their own non-work-related injuries, illnesses, or conditions, including pregnancy, that prevent them from working, but do not cover leave to care for a sick or injured child, spouse, parent, domestic partner, or leave to bond with a new child.

(f) The majority of workers in this state are unable to take family care leave because they are unable to afford leave without pay. When workers do not receive some form of wage replacement during family care leave, families suffer from the worker's loss of income, increasing the demand on the state unemployment insurance system and dependence on the state's welfare system.

(g) It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program shall be a component of the state's unemployment compensation disability insurance program, shall be funded through employee contributions, and shall be administered in accordance with the policies of the state disability insurance program created pursuant to this part. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the Disability Fund.

SEC. 21. Section 3301 of the Unemployment Insurance Code is amended to read:

3301. (a) (1) The purpose of this chapter is to establish, within the state disability insurance program, a family temporary disability insurance program. Family temporary disability insurance shall provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

(2) Nothing in this chapter shall be construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave.

(b) An individual's ''weekly benefit amount'' shall be the amount provided in Section 2655. An individual is eligible to receive family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unable to work due to caring for a seriously ill or injured family member or bonding with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

(c) The maximum amount payable to an individual during any disability benefit period for family temporary disability insurance shall be six times his or her ''weekly benefit amount,'' but in no case shall the total amount of benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(d) No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period.

(e) An individual shall file a claim for family temporary disability insurance benefits not later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits, which time shall be extended by the department upon a showing of good cause. If a first claim is not complete, the claim form shall be returned to the claimant for completion and it shall be completed and returned not later than the 10th consecutive day after the date it was mailed by the department to the claimant, except that such time shall be extended by the department upon a showing of good cause.

SEC. 22. Section 3302 of the Unemployment Insurance Code is amended to read:

3302. For purposes of this part:

(a) ''Care recipient'' means the family member who is receiving care for a serious health condition or the new child with whom the care provider is bonding.

(b) ''Care provider'' means the family member who is providing the required care for a serious health condition or the family member who is bonding with the new child.

(c) ''Child'' means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

(d) ''Domestic partner'' has the same meaning as defined in Section 297 of the Family Code.

(e) ''Family care leave'' means any of the following:

(1) Leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(2) Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition.

(f) ''Family member'' means child, parent, spouse, or domestic partner as defined in this section.

(g) ''Parent'' means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(h) ''Serious health condition'' means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code.

(i) ''Spouse'' means a partner to a lawful marriage.

(j) ''Valid claim'' means any claim for family temporary disability insurance benefits made in accordance with the provisions of this code, and any rules and regulations adopted thereunder, if the individual claiming benefits is unemployed and has been paid the necessary wages in employment for employers to qualify for benefits under Section 2652 and is caring for a seriously ill family member, or bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption.

(k) ''Twelve-month period,'' with respect to any individual, means the 365 consecutive days that begin with the first day the individual first establishes a valid claim for family temporary disability benefits.

SEC. 23. Section 3302.1 is added to the Unemployment Insurance Code, to read:

3302.1. For purposes of this chapter:

(a) ''Disability benefit period'' with respect to any individual, means the period of unemployment beginning with the first day an individual establishes a valid claim for family temporary disability insurance benefits to care for a seriously ill family member, or to bond with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption.

(b) Periods of family care leave for the same care recipient within a 12-month period shall be considered one disability benefit period.

(c) Periods of disability for pregnancy, as defined in Section 2608, and periods of family care leave for bonding associated with the birth of that child shall be considered one disability benefit period.

SEC. 24. Section 3303 of the Unemployment Insurance Code is amended to read:

3303. An individual shall be deemed eligible for family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption or caring for a seriously ill

child, parent, spouse, or domestic partner, only if the director finds all of the following:

(a) The individual has made a claim for temporary disability benefits as required by authorized regulations.

(b) The individual has been unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable.

(c) The individual has filed a certificate, as required by Sections 2708 and 2709.

SEC. 25. Section 3303.1 is added to the Unemployment Insurance Code, to read:

3303.1. (a) An individual is not eligible for family temporary disability insurance benefits with respect to any day that any of the following apply:

(1) The individual has received, or is entitled to receive, unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.

(2) The individual has received, or is entitled to receive, ''other benefits'' in the form of cash benefits as defined in Section 2629.

(3) The individual has received, or is entitled to receive, state disability insurance benefits under Part 2 (commencing with Section 2601) or under a disability insurance act of any other state.

(4) Another family member, as defined in Section 3302, is ready, willing, and able and available for the same period of time in a day that the individual is providing the required care.

(b) An individual who is entitled to leave under the FMLA and the CFRA must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA.

(c) As a condition of an employee's initial receipt of family temporary disability insurance benefits during any 12-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required under subdivision (b) of Section 3303. This subdivision may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this subdivision.

SEC. 26. Section 3305 of the Unemployment Insurance Code is amended to read:

3305. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of Article 8 (commencing with Section 1126) of Chapter 4 of Part 1, with respect to assessments the provisions of Article 9 (commencing with Section 1176) of Chapter 4 of Part 1, with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) of Part 1, with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

SEC. 27. Section 3306 is added to the Unemployment Insurance Code, to read:

3306. (a) The director may request additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the care recipient. The director may require that the additional evidence include any or all of the following information:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the care recipient's serious health condition that warrants the participation of the employee. The statement shall be completed by any of the following people:

(A) The physician or practitioner treating the care recipient.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the care recipient.

(C) An examining physician or other representative of the department.

(b) Except as provided in Section 2709, the director may require the care recipient to submit to reasonable examinations for the purpose of determining all of the following:

(1) Whether a serious health condition exists.

(2) Whether a care provider's participation is warranted.

(3) The period of time that the care provider's participation is warranted.

SEC. 28. This act shall become operative on January 1, 2004, except that benefits shall be payable for family temporary disability insurance claims commencing on or after July 1, 2004.

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CHAPTER 798

An act to amend Section 17217 of the Education Code, relating to schoolsite acquisition.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 17217 of the Education Code is amended to read:

17217. (a) The governing board of a school district may acquire a site for a school building contiguous to the boundaries of the district and upon the acquisition of the site it shall become a part of the district.

(b) The site may not be acquired until all of the following conditions are met:

(1) A majority of the members of the governing board of the acquiring school district approves a petition requesting approval of the acquisition.

(2) The petition is filed with the county superintendent of schools with jurisdiction over the acquiring school district. If the site is in a county that is not the county in which the acquiring school district is located, the petition shall be filed with each of the county superintendents of the counties concerned. Within 10 working days of the date the petition is filed, each superintendent of schools of those counties shall notify the governing board of each school district involved that the petition was filed.

(3) The county committee on school district organization of the county of the acquiring school district approves the petition. If the site is in a county that is not the county in which the acquiring school district is located, each of the county committees on school district organization concerned shall approve the petition. The county committees on school district organization shall approve or disapprove a petition within 60 days from the day the governing board filed the petition with the county superintendent of schools.

(c) Notwithstanding subdivision (b), if each of the county committees on school district organization does not approve the petition as required by paragraph (3) of subdivision (b), the petition may be submitted to the Superintendent of Public Instruction for approval. If the Superintendent of Public Instruction approves the petition, the governing board may acquire the site.

(d) In approving the acquisition of a site pursuant to this section, the county committees on school district organization and the Superintendent of Public Instruction shall consider the extent to which the following are met:

(1) The proposed site acquisition will not promote racial or ethnic discrimination or segregation.

(2) The proposed site acquisition will not result in any substantial increase in costs to the state.

(3) The proposed site acquisition will not significantly disrupt the educational programs in the school districts affected by the proposed site acquisition and will continue to promote sound education performance in those school districts.

(4) The proposed site acquisition will not result in a significant increase in school housing costs.

(5) The proposed site acquisition is not primarily designed to result in a significant increase in property values causing financial advantage to property owners because territory was transferred from one school district to an adjoining school district.

(6) The proposed site acquisition will not cause a substantial negative effect on the fiscal management or fiscal status of any school district affected by the proposed site acquisition.

(e) The power of eminent domain may be used for the purposes of this section.

(f) A schoolsite is contiguous for the purpose of this section although separated from the boundaries of the district by a road, street, stream, or other natural or artificial barrier or right-of-way.

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

CHAPTER 799

An act to amend Sections 19801, 19876, 19951, 19962, and 19963 of the Business and Professions Code, relating to gambling.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 19801 of the Business and Professions Code is amended to read:

19801. The Legislature hereby finds and declares all of the following:

(a) The longstanding public policy of this state disfavors the business of gambling. State law prohibits commercially operated lotteries, banked or percentage games, and gambling machines, and strictly regulates parimutuel wagering on horse racing. To the extent that state law categorically prohibits certain forms of gambling and prohibits gambling devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.

(b) Gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.

(c) (1) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

(2) The State of California has permitted the operation of gambling establishments for more than one hundred years. Gambling establishments were first regulated by the State of California pursuant to legislation which was enacted in 1984. Gambling establishments currently employ more than twenty thousand people in the State of California, and contribute more than one hundred million dollars in taxes and fees to California's government. Gambling establishments are lawful enterprises in the State of California, and are entitled to full protection of the laws of this state. The industry is currently in significant decline, with more than half the gambling establishments in this state closing within the past four years.

(d) It is the policy of this state that gambling activities that are not expressly prohibited or regulated by state law may be prohibited or regulated by local government. Moreover, it is the policy of this state that no new gambling establishment may be opened in a city, county, or city and county in which a gambling establishment was not operating on and before January 1, 1984, except upon the affirmative vote of the electors of that city, county, or city and county.

(e) It is not the purpose of this chapter to expand opportunities for gambling, or to create any right to operate a gambling enterprise in this state or to have a financial interest in any gambling enterprise. Rather, it is the purpose of this chapter to regulate businesses that offer otherwise lawful forms of gambling games.

(f) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

(g) Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

(h) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

(i) To ensure that gambling is conducted honestly, competitively, and free of criminal and corruptive elements, all licensed gambling establishments in this state must remain open to the general public and the access of the general public to licensed gambling activities must not be restricted in any manner, except as provided by the Legislature. However, subject to state and federal prohibitions against discrimination, nothing herein shall be construed to preclude exclusion of unsuitable persons from licensed gambling establishments in the exercise of reasonable business judgment.

(j) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

(k) The location of lawful gambling premises, the hours of operation of those premises, the number of tables permitted in those premises, and wagering limits in permissible games conducted in those premises are proper subjects for regulation by local governmental bodies. However, consideration of those same subjects by a state regulatory agency, as specified in this chapter, is warranted when local governmental regulation respecting those subjects is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.

(*l*) The exclusion or ejection of certain persons from gambling establishments is necessary to effectuate the policies of this chapter and to maintain effectively the strict regulation of licensed gambling.

(m) Records and reports of cash and credit transactions involving gambling establishments may have a high degree of usefulness in criminal and regulatory investigations and, therefore, licensed gambling operators may be required to keep records and make reports concerning significant cash and credit transactions.

SEC. 2. Section 19876 of the Business and Professions Code is amended to read:

19876. (a) Subject to the power of the commission to deny, revoke, suspend, condition, or limit any license, as provided in this chapter, a license shall be renewed annually, or for a longer period that the commission may set, not to exceed two years, by the commission from the date of issuance, upon proper application for renewal and payment of state gambling fees as required by statute or regulation. Any license that is renewed for a period of longer than one year shall be reviewed by the commission, and may be amended to be for one year, upon order of the commission. All licensees shall pay any state gambling fee set forth in Section 19951, regardless of the renewal term.

(b) An application for renewal of a gambling license shall be filed by the owner licensee with the commission no later than 120 calendar days prior to the expiration of the current license. The commission shall act upon any application for renewal prior to the date of expiration of the current license. Upon renewal of any owner license, the commission shall issue an appropriate renewal certificate or validating device or sticker.

(c) Unless the commission determines otherwise, renewal of an owner's gambling license shall be deemed to effectuate the renewal of every other gambling license endorsed thereon.

(d) In addition to the penalties provided by law, any owner licensee who deals, operates, carries on, conducts, maintains, or exposes for play any gambling game after the expiration date of the gambling license is liable to the state for all license fees and penalties that would have been due upon renewal.

(e) If an owner licensee fails to renew the gambling license as provided in this chapter, the commission may order the immediate closure of the premises and a cessation of all gambling activity therein until the license is renewed.

SEC. 3. Section 19951 of the Business and Professions Code is amended to read:

19951. (a) Every application for a license or approval shall be accompanied by a nonrefundable fee of five hundred dollars ($500).

(b) (1) Any fee paid pursuant to this section, including all licenses issued to key employees and other persons whose names are endorsed upon the license, shall be assessed against the gambling license issued to the owner of the gambling enterprise.

(2) (A) The fee for initial issuance of a state gambling license shall be an amount determined by the division pursuant to the schedule in subdivision (c).

(B) The fee for the renewal of a state gambling license shall be determined pursuant to the schedule in subdivision (c) or the schedule in subdivision (d), whichever amount is greater.

(C) In any year in which a licensee does not pay a fee pursuant to subparagraph (A) or (B), a licensee shall pay a state gambling fee which shall be determined pursuant to the schedule in subdivision (c) or the schedule in subdivision (d), whichever amount is greater.

(c) The schedule based on the number of tables is as follows:

(1) For a license authorizing one to five tables, inclusive, at which games are played, two hundred fifty dollars ($250) for each table.

(2) For a license authorizing six to eight tables, inclusive, at which games are played, four hundred fifty dollars ($450) for each table.

(3) For a license authorizing 9 to 14 tables, inclusive, at which games are played, one thousand fifty dollars ($1,050) for each table.

(4) For a license authorizing 15 to 25 tables, inclusive, at which games are played, two thousand one hundred fifty dollars ($2,150) for each table.

(5) For a license authorizing 26 to 70 tables, inclusive, at which games are played, three thousand two hundred dollars ($3,200) for each table.

(6) For a license authorizing 71 or more tables at which games are played, three thousand seven hundred dollars ($3,700) for each table.

(d) Without regard to the number of tables at which games may be played pursuant to a gambling license, if, at the time of any license renewal, or when a licensee is required to pay the fee described in subparagraph (C) of paragraph (2) of subdivision (b) it is determined that the gross revenues of an owner licensee during the licensee's previous fiscal year fell within the following ranges, the annual fee shall be as follows:

(1) For a gross revenue of two hundred thousand dollars ($200,000) to four hundred ninety-nine thousand nine hundred ninety-nine dollars ($499,999), inclusive, the amount specified by the division pursuant to paragraph (2) of subdivision (c).

(2) For a gross revenue of five hundred thousand dollars ($500,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine dollars ($1,999,999), inclusive, the amount specified by the division pursuant to paragraph (3) of subdivision (c).

(3) For a gross revenue of two million dollars ($2,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine dollars ($9,999,999), inclusive, the amount specified by the division pursuant to paragraph (4) of subdivision (c).

(4) For a gross revenue of ten million dollars ($10,000,000) or more, the amount specified by the division pursuant to paragraph (5) of subdivision (c).

(e) The commission may provide for payment of the annual gambling license fee on an annual or installment basis.

(f) For the purposes of this section, each table at which a game is played constitutes a single game table.

SEC. 4. Section 19962 of the Business and Professions Code is amended to read:

19962. (a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) An ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may not be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) This section shall remain operative only until January 1, 2010, and as of that date is repealed.

SEC. 5. Section 19963 of the Business and Professions Code is amended to read:

19963. (a) In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, the commission may not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

(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.

CHAPTER 800

An act to add Section 60061.8 to the Education Code, relating to instructional materials.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) All major publishers of instructional materials are developing various ways of delivering general curriculum to pupils in an array of formats, including print, video, CD-ROM, and the Internet.

(b) Federal legislation, including the Individuals with Disabilities Education Act and the No Child Left Behind Act of 2001, mandate access to general curriculum for pupils with disabilities.

(c) Powerful new learning technologies are being produced today and more are yet to be defined. If access to those technologies is not installed before production and dissemination to schools, those technologies will have to be retrofitted at great expense, in order to accommodate over 600,000 California pupils with disabilities.

(d) The range of performance and ability of pupils in kindergarten and grades 1 to 12, inclusive, varies greatly.

SEC. 2. Section 60061.8 is added to the Education Code, to read:

60061.8. (a) Basic instructional materials, as defined by Section 60010, offered on or after January 1, 2005, shall comply with all of the following:

(1) Print materials shall have sharp, clear, high contrast, and highly legible fonts. Print materials designed for kindergarten shall use fonts that are at least 20 point. Print materials designed for grade 1 shall use fonts that are at least 18 point. Print materials designed for grade 2 shall use fonts that are at least 16 point.

(2) Video products designed for pupils in kindergarten and grades 1 to 12, inclusive, shall be closed-captioned , as defined by the Federal Communications Commission, except for the following:

(A) Those video products or portions of video products, if any, for which the publisher does not have the rights to do so.

(B) Those video products or portions of video products that are open-captioned, meaning that all viewers see the captioned information.

(3) (A) Internet resources and digital multimedia programs intended for use by the general population of pupils, for pupils in kindergarten and grades 1 to 12, inclusive, shall at least meet the standards for accessibility, as set forth in 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 Code of Federal Regulations, unless meeting those standards would do any of the following:

(i) Fundamentally alter the nature of the instructional activity.

(ii) Result in those resources or programs placing an undue financial and administrative burden on the state agencies, school districts, or schools that would likely access or utilize the resources or programs, as determined by the affected agencies in collaboration with the publishers.

(iii) Cause those resources or programs to fail to meet standards otherwise required by statute or regulation.

(B) In order to facilitate access by pupils with disabilities who are progressing in the general curriculum, to the extent technologically feasible, a digital multimedia program shall allow the user to control sizing of images and fonts, speed and volume of audio, colors or contrast, or both colors and contrast, and other inherently transformable attributes, but not for modification of content, to match individual performance and abilities. If a publisher is not able to create a multimedia program that satisfies the requirements of this subparagraph, the publisher shall provide the State Department of Education, upon request, with computer files or other electronic versions of textual content of basic instructional materials compatible with braille transcription, meeting department specifications at no additional cost, and as a condition of sale.

(b) This section does not apply to basic instructional materials adopted, prior to January 1, 2005, by the state board pursuant to Section 60200, to the extent those instructional materials do not already comply with this section. A publisher of basic instructional materials adopted before January 1, 2005, may voluntarily modify those materials as may be necessary to comply with this section.

CHAPTER 801

An act to amend Section 13269 of the Water Code, relating to water.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 13269 of the Water Code is amended to read:

13269. (a) (1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.

(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a

regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring, except as provided in paragraph (3). Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

(4) (A) The state board or a regional board may include as a condition of a waiver the payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260.

(B) Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board for the purpose of carrying out activities limited to those necessary to establish and implement the waiver program pursuant to this section. The total amount of annual fees collected pursuant to this section shall not exceed the costs of those activities necessary to establish and implement waivers of waste discharge requirements pursuant to this section.

(C) In establishing the amount of a fee that may be imposed on irrigated agriculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

(i) The size of the operations.

(ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.

(iii) Any costs associated with water quality monitoring performed or funded by the operations.

(iv) Participation in a watershed management program approved by the applicable regional water quality control board.

(D) In establishing the amount of a fee that may be imposed on silviculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:

(i) The size of the operations.

(ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.

(iii) Any costs associated with water quality monitoring performed or funded by the operations.

(iv) The average annual number of timber harvest plans proposed by the operations.

(5) The state board or a regional board shall give notice of the adoption of a waiver by publication within the affected county or counties as set forth in Section 6061 of the Government Code.

(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 (c) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 do not apply to a 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 state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or 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.

CHAPTER 802

An act to add Section 12012.30 to the Government Code, relating to gaming.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 12012.30 is added to the Government Code, to read:

12012.30. The tribal-state gaming compact entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the Torres-Martinez Desert Cahuilla Indians, executed on August 12, 2003, is hereby ratified.

CHAPTER 803

An act to add Sections 60852.5 and 60852.6 to the Education Code, relating to the high school exit examination.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 60852.5 is added to the Education Code, to read:

60852.5. (a) By January 31, 2004, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, a request for a proposal for an independent consultant to assess options and provide recommendations for alternatives to the high school exit examination for pupils with disabilities to be eligible for a high school diploma. By April 30, 2004, an independent consultant shall be selected by a selection panel consisting of one representative appointed by each of the following persons and entities:

(1) The President pro Tempore of the Senate.

(2) The Speaker of the Assembly.

(3) The Legislative Analyst's Office.

(4) The State Department of Education.

(5) The Department of Finance.

(b) The independent consultant should possess expertise on the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and applicable state law, as well as assessment methodologies concerning pupils with disabilities.

(c) The independent consultant shall, in consultation with the advisory panel established pursuant to Section 60852.6, prepare a report that does all of the following:

(1) Recommends options for graduation requirements and assessments for pupils who are individuals with exceptional needs, as defined in Section 56026, or who are disabled, as defined in Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(2) Identifies those provisions of state and federal law and regulation that are relevant to graduation requirements and assessments for pupils who are individuals with exceptional needs.

(3) Recommends the steps that would be taken to bring California into full compliance with the state and federal law and regulations that are identified pursuant to paragraph (2).

(d) The independent consultant shall provide the advisory panel established pursuant to Section 60852.6 with a preliminary report of findings and shall include the advisory panel's concerns and recommendations in a final report. The final report shall be disseminated to the members of the advisory panel, the Legislature, the Legislative Analyst's Office, the Department of Finance, the State Department of Education, and interested parties no later than May 1, 2005.

(e) The Superintendent of Public Instruction may, upon approval of an expenditure plan by the Department of Finance and the Joint Legislative Budget Committee, provide funds for the purposes of

implementing the recommendations provided pursuant to subdivision (c).

SEC. 2. Section 60852.6 is added to the Education Code, to read:

60852.6. (a) The Superintendent of Public Instruction shall establish, by April 30, 2004, a 15-member High School Exit Examination for Pupils With Disabilities Advisory Panel to advise the independent consultant selected pursuant to Section 60852.5. The members of the advisory panel shall be composed of the following individuals:

(1) Three parents or guardians of pupils with disabilities.

(2) An individual with disabilities.

(3) Three credentialed teachers who work with pupils with disabilities.

(4) Two representatives of institutions of higher education that prepare special education and related services personnel.

(5) A director of a special education local planning area.

(6) Two school administrators whose duties relate to the provision of services to pupils with disabilities.

(7) A representative from the State Department of Education.

(8) A representative of a vocational, community, or business organization concerned with the provision of transition services to pupils with disabilities.

(9) A representative of community-based organizations providing special education and related services.

(b) The members of the advisory panel shall serve without compensation for a term of one year and shall be representative of the state's ethnic and cultural diversity and gender balance. The Superintendent of Public Instruction shall also make every effort to ensure that the panel is representative of the state's diversity relative to urban, suburban, and rural areas. The State Department of Education shall provide staff and resources to the advisory panel.

SEC. 3. Of the funds appropriated in Schedule 12 of Item 6110-113-0890 of Section 2.00 of the Budget Act of 2003, the amount of four hundred thousand dollars ($400,000) shall be available for the purposes of Section 60852.5 of the Education Code. The balance of six hundred thousand dollars ($600,000) shall be available until June 30, 2006, to support approved options pursuant to subdivision (e) of Section 60852.5 of the Education Code.

CHAPTER 804

An act to amend Section 1726 of, and to add Section 1781 to, the Labor Code, relating to prevailing wages.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 1726 of the Labor Code is amended to read:

1726. (a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a ''public work,'' as defined in this chapter.

(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a ''public work,'' as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

SEC. 2. Section 1781 is added to the Labor Code, to read:

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a ''public work,'' as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as

a ''public work,'' as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a ''public work.''

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a ''public work,'' as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a ''public work.''

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a ''public work,'' as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the ''public work'' covered by the contract as a ''public work,'' any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) ''Awarding body'' does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) ''Increased costs'' includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the ''public work'' as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

CHAPTER 805

An act to amend Section 602 of the Penal Code, relating to trespass.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the

public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business

or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the

premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace

officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 1.1. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging

in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(w) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein.

Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 1.2. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v) and in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to

the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business

or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the

premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace

officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to

control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 1.3. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the

owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the

premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he

or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 936. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602

of the Penal Code, (3) AB 1263 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 936, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 1263. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602 of the Penal Code, (3) AB 936 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1263, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 602 of the Penal Code proposed by this bill, AB 936, and AB 1263. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 602 of the Penal Code, and (3) this bill is enacted after AB 936, and AB 1263, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

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

CHAPTER 806

An act to add and repeal Section 60227 to the Education Code, relating to children, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 60227 is added to the Education Code, to read:

60227. (a) For purposes of this section, a followup adoption is any adoption other than the primary adoption that occurs within a six- or eight-year cycle established pursuant to subdivision (b) of Section 60200.

(b) Before conducting a followup adoption in a given subject, the department shall provide notice, pursuant to subdivision (c), to all

publishers or manufacturers known to produce basic instructional materials in that subject, post an appropriate notice on the department's Internet site, and take other reasonable measures to ensure that appropriate notice is widely circulated to potentially interested publishers and manufacturers.

(c) The notice shall specify that each publisher or manufacturer choosing to participate in the followup adoption shall be assessed a fee based upon the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

(d) The fee shall offset the cost of conducting the followup adoption process and shall reflect the department's best estimate of the cost. The department shall take reasonable steps to limit costs of the followup adoption and to keep the fee modest, recognizing that some of the work necessary for the primary adoption need not be duplicated.

(e) The department, prior to incurring substantial costs for the followup adoption, shall require that a publisher or manufacturer who wishes to participate in the followup adoption first declare the intent to submit one or more specific programs for the followup adoption and specify the specific grade levels to be covered by each program. After a publisher or manufacturer has declared the intent to submit one or more programs and the grade levels to be covered by each program, a fee shall be assessed by the department. The fee shall be payable by the publisher or manufacturer even if the publisher subsequently chooses to withdraw a program or reduce the number of grade levels covered. A submission by a publisher or manufacturer may not be reviewed for purposes of adoption, either in a followup adoption or in any other primary or followup adoption conducted thereafter, until the fee assessed has been paid in full.

(f) (1) It is the intent of the Legislature that the fee not be so substantial that it prevents small publishers or manufacturers from participating in a followup adoption.

(2) Upon the request of a small publisher or manufacturer, the State Board of Education may reduce the fee for participation in the followup adoption.

(3) For purposes of this section, ''small publisher'' and ''small manufacturer'' mean an independently owned or operated publisher or manufacturer who is not dominant in its field of operation, and who, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years.

(g) Notwithstanding subdivision (b) of Section 60200, if the department determines that there is little or no interest in participating in a followup adoption by publishers and manufacturers, it shall

recommend to the State Board of Education that the followup adoption not be conducted, and the State Board of Education may chose not to conduct the followup adoption.

(h) Notwithstanding Section 13340 of the Government Code, revenue derived from fees charged pursuant to subdivision (c) is hereby continuously appropriated and available to the department from year to year until expended. Revenue derived from fees charged pursuant to subdivision (c) may be used to pay costs associated with any followup adoption and any costs associated with the review of instructional materials.

(i) 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. Notwithstanding any other provision of law, funds appropriated pursuant to Provision 17 of Item 6110-161-0890 of the Budget Act of 2003 (Ch. 157, Stats. 2001) shall not be used by the Controller for recoupment of prior year audit findings.

CHAPTER 807

An act to amend Sections 1973, 2154.4, 5001, 5061, 5081, 5082, 5082.2, 5107, 5131, 7139.2, 7583.6, and 7583.9 of, to amend, add, and repeal Sections 10152 and 10153.3 of, to add Section 5115 to, to repeal Section 5091 of, and to repeal and add Section 5082.1 to, the Business and Professions Code, relating to professions and vocations, making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 1973 of the Business and Professions Code is amended to read:

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 may not exceed one hundred five thousand dollars ($105,000) per individual licensed dentist.

(3) Loan repayments may 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.

(e) Funds in the Dentally Underserved Account appropriated in subdivision (b) or received pursuant to subdivision (d) are continuously appropriated for the repayment of loans per agreements made between the board and the dentists.

SEC. 2. Section 2154.4 of the Business and Professions Code is amended to read:

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 may not exceed one hundred five thousand dollars ($105,000) per individual licensed physician.

(3) Loan repayments may 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.

(e) Funds in the Medically Underserved Account appropriated in subdivision (b) or received pursuant to subdivision (d) are continuously appropriated for the repayment of loans per agreements made between the board and the physicians.

SEC. 3. Section 5001 of the Business and Professions Code is amended to read:

5001. (a) Except as provided in subdivision (b), each member of the board, except the public members, shall be actively engaged in the practice of public accountancy and shall have been so engaged for a period of not less than five years preceding the date of his appointment. Each member shall be a citizen of the United States and a resident of this state for at least five years next preceding his appointment, and shall be of good character. Within 30 days after their appointment, the members of the board shall take and subscribe to the oath of office as prescribed by the Government Code and shall file the same with the Secretary of State.

(b) One licensee member appointed by the Governor may be an active educator within a program that emphasizes the study of accounting within a college, university, or four-year educational institution.

SEC. 4. Section 5061 of the Business and Professions Code 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 third party for providing the products or services of that third party to 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 board's definition of small business, as specified by regulation.

(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. 5. Section 5081 of the Business and Professions Code is amended to read:

5081. An applicant for an authorization to be admitted to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application prescribed by the board. This application shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the educational requirements specified in this article.

SEC. 6. Section 5082 of the Business and Professions Code is amended to read:

5082. An applicant for a certified public accountant license shall have successfully passed an examination in subjects the board deems appropriate, and in the form and manner that the board deems appropriate. The board may, by regulation, prescribe the methods for

applying for and conducting the examination, including methods for grading and determining a passing grade.

SEC. 7. Section 5082.1 of the Business and Professions Code is repealed.

SEC. 8. Section 5082.1 is added to the Business and Professions Code, to read:

5082.1. (a) The examination required by the board for the granting of a license as a certified public accountant may be conducted by the board or by a public or private organization specified by the board. The examination may be conducted under a uniform examination system.

(b) The board may make arrangements with a public or private organization for the conduct of the examination, as deemed necessary by the board. The board may contract with a public or private organization for materials or services related to the examination.

SEC. 9. Section 5082.2 of the Business and Professions Code is amended to read:

5082.2. For candidates seeking to be reexamined pursuant to subdivision (b) of Section 5090, a candidate who fails an examination provided for in this article shall have the right to any number of reexaminations at subsequent examinations. A candidate who passes an examination in two or more subjects shall have the right to be reexamined in the remaining subject or subjects only, at subsequent examinations, and if he or she passes in the remaining subject or subjects within a period of time specified in the rules of the board he or she shall be considered to have passed the examination.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 10. Section 5091 of the Business and Professions Code, as added by Section 19 of Chapter 718 of the Statutes of 2001, is repealed.

SEC. 11. Section 5091 of the Business and Professions Code, as added by Section 16 of Chapter 704 of the Statutes of 2001, is repealed.

SEC. 12. Section 5107 of the Business and Professions Code is amended to read:

5107. (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivision (b), (c), (j), or (k) of Section 5100, or involving a felony conviction in violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of subdivision (i) of Section 5100, to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

(d) The finding of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced, he or she shall set forth the factual basis for his or her finding in the proposed decision.

(g) Where an order for recovery of costs is made and timely payment is not made as directed by the board's decision, the board may enforce the order for payment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any holder of a permit or certificate directed to pay costs.

(h) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms of payment.

(i) All costs recovered under this section shall be deposited in the Accountancy Fund.

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of any permit or certificate.

SEC. 13. Section 5115 is added to the Business and Professions Code, to read:

5115. (a) A person whose license has been revoked or surrendered may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition, unless a longer period, not to exceed three years, is specified by the board in any decision revoking the license, accepting the surrender of the license, or denying reinstatement of the license.

(b) A person whose license has not been revoked or surrendered but who has been disciplined by imposition of a suspension or otherwise disciplined may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision.

(c) The board shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the board itself. The board itself shall rule on the petition, and the decision shall include the reasons therefor and any terms and conditions that the board reasonably deems appropriate to impose as a condition of reinstatement or reduction of penalty, including, but not limited to, restrictions on the petitioner's scope of professional practice.

SEC. 14. Section 5131 of the Business and Professions Code is amended to read:

5131. (a) The board may charge and collect an application fee and an examination fee from each applicant. The applicable fees shall accompany the application which shall be made on a form provided by the board.

(b) Notwithstanding any other provision of this chapter, the board may authorize an organization specified by the board pursuant to Section 5082.1 to receive directly from applicants payment of the examination fees charged by that organization as payment for examination materials and services.

SEC. 15. Section 7139.2 of the Business and Professions Code is amended to read:

7139.2. (a) There is hereby created the Construction Management Education Account (CMEA) as a separate account in the Contractors' License Fund for the purposes of construction management education. Funds in the account shall be available for the purposes of this article upon appropriation by the Legislature.

(b) The Contractors' State License Board shall allow a contractor to make a contribution to the Construction Management Education Account at the time of the contractor license fee payment. The license fee form shall clearly display this alternative on its face and shall clearly inform the licensee that this provision is a contribution to the Construction Management Education Account and is in addition to the fees.

(c) The board may accept grants from federal, state, or local public agencies, or from private foundations or individuals, in order to assist it in carrying out its duties, functions, and powers under this article. Grant moneys shall be deposited into the Construction Management Education Account.

SEC. 16. Section 7583.6 of the Business and Professions Code, as added by Section 3 of Chapter 886 of the Statutes of 2002, is amended to read:

7583.6. (a) A person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) Except for a registrant who has completed the course of training required by Section 7583.45, a person registered pursuant to this chapter shall complete not less than 32 hours of training in security officer skills within six months from the day the registration card is issued. Sixteen of the 32 hours must be completed within 30 days from the day the registration card is issued.

(c) A course provider shall issue a certificate to a security guard upon satisfactory completion of a required course, conducted in accordance with the department's requirements. A private patrol operator may provide training programs and courses in addition to the training required in this section.

(d) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (b) to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(e) The course of training required by subdivision (b) may be administered, tested, and certified by any licensee, or by any organization or school approved by the department. The department may approve any person or school to teach the course.

(f) (1) On and after January 1, 2005, a licensee shall annually provide each employee registered pursuant to this chapter with eight hours of specifically dedicated review or practice of security officer skills prescribed in either course required in Section 7583.6 or 7583.7.

(2) A licensee shall maintain at the principal place of business or branch office a record verifying completion of the review or practice training for a period of not less than two years. The records shall be available for inspection by the bureau upon request.

(g) This section does not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest approved by the Commission on Peace Officer Standards and Training. This section does not apply to armored vehicle guards.

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

SEC. 17. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense 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.

(f) (1) The requirement in subdivision (a) to submit a fingerprint card does not apply to any of the following:

(A) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(B) A level I or level II reserve officer under paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code.

(2) An individual listed in subparagraph (A) or (B) of paragraph (1) may immediately perform the functions of a security guard or security patrolperson provided that he or she has submitted an application, the applicable fees, and his or her fingerprints, if required to submit fingerprints pursuant to subdivision (a), to the bureau for a security guard registration.

(3) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 18. Section 10152 of the Business and Professions Code is amended to read:

10152. (a) The commissioner may require any other proof he or she may deem advisable concerning the honesty and truthfulness of any applicant for a real estate license, or of the officers, directors, or persons owning more than 10 percent of the stock, of any corporation making application therefor, before authorizing the issuance of a real estate license. For this purpose the commissioner may call a hearing in accordance with this part relating to hearings. To assist in his or her determination the commissioner shall require every original applicant to be fingerprinted.

(b) This section shall remain in effect only until July 1, 2004, and, as of that date is repealed, unless a later enacted statute that is chaptered on or before July 1, 2004, extends or repeals that date.

SEC. 19. Section 10152 is added to the Business and Professions Code, to read:

10152. (a) The commissioner may require any other proof he or she may deem advisable concerning the honesty and truthfulness of any applicant for a real estate license or license examination, or of the officers, directors, or persons owning more than 10 percent of the stock, of any corporation making application therefor, before authorizing the issuance of a real estate license. For this purpose the commissioner may call a hearing in accordance with this part relating to hearings. To assist in his or her determination the commissioner shall require every original applicant to be fingerprinted prior to issuing a license. The commissioner may require the fingerprints to be submitted either with the application to take the license examination or with the application for a real estate license.

(b) This section shall become operative on July 1, 2004.

SEC. 20. Section 10153.3 of the Business and Professions Code is amended to read:

10153.3. (a) In order to take an examination for a real estate salesperson license after January 1, 1986, an applicant shall submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of a three-semester unit course, or the quarter equivalent thereof, in real estate principles.

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California, or who has completed an equivalent course of study, as determined under Section 10153.5, or who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

(c) This section shall remain in effect only until July 1, 2004, and, as of that date is repealed, unless a later enacted statute that is chaptered on or before July 1, 2004, extends or repeals that date.

SEC. 21. Section 10153.3 is added to the Business and Professions Code, to read:

10153.3. (a) In order to take an examination for a real estate salesperson license, an applicant shall submit evidence or certification, satisfactory to the commissioner, of enrollment in, or successful completion at, an accredited institution, of a three-semester unit course, or the quarter equivalent thereof, in real estate principles. Evidence of enrollment satisfactory to the commissioner may include a statement from the applicant made under penalty of perjury.

(b) An applicant for an original real estate salesperson license shall submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a three-semester unit course, or the quarter equivalent thereof, in real estate principles.

(c) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California, or who has completed an equivalent course of study, as determined under Section 10153.5, or who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

(d) This section shall become operative on July 1, 2004.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 808

An act to amend Section 14310 of Elections Code, relating to elections.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration

for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.

(3) A precinct board member shall notify the voter of the contents of this subdivision at the time of receiving the provisional ballot of the voter.

(4) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(e) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(f) Any existing supply of envelopes marked ''special challenged ballot'' may be used until the supply is exhausted.

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

CHAPTER 809

An act to amend Sections 2194, 14217, 14310, and 14311 of, to add Sections 17, 2124, 2131, and 14402.5 to, and to repeal and add Section 14200 of, the Elections Code, and to amend Section 6254.4 of the Government Code, relating to elections.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 17 is added to the Elections Code, to read:

17. The Secretary of State shall establish and maintain administrative complaint procedures, pursuant to the requirements of Section 402 of the Help America Vote Act of 2002 (P.L. 107-252), in order to remedy grievances in the administration of elections.

SEC. 2. Section 2124 is added to the Elections Code, to read:

2124. The Secretary of State shall, by regulation, adopt uniform standards for proof of residency, which shall apply in all instances where voters and new registrants are required by law to prove residency.

SEC. 3. Section 2131 is added to the Elections Code, to read:

2131. The Secretary of State may provide grants to local elections officials, nonprofit corporations, and unincorporated associations for the following purposes:

(a) To conduct voter outreach and voter education programs, in accordance with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), using funds provided to the state by Sections 101 and 251 of that act.

(b) To increase accessibility for eligible voters with disabilities, in accordance with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), using funds provided to the state by Section 261 of that act.

SEC. 4. Section 2194 of the Elections Code is amended to read:

2194. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall be provided with respect to any voter, subject to the provisions of Section 2188, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) Notwithstanding any other provision of law, the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to voter registration records to comply with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), are confidential and shall not be disclosed to any person.

(c) The home address of any voter shall be released whenever the person's vote is challenged pursuant to Sections 15003, 15005 to 15007, inclusive, or 14240 to 14253, inclusive. The address shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(d) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

SEC. 5. Section 14200 of the Elections Code is repealed.

SEC. 6. Section 14200 is added to the Elections Code, to read:

14200. A member of each precinct board shall cause the following voting information to be publicly posted at each polling place on the day of each election:

(a) A sample version of the ballot that will be used for the election.

(b) Information regarding the date of the election and the hours during which polling places will be open.

(c) Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot.

(d) Instructions for mail-in registrants and first-time voters under Section 303(b) of the Help America Vote Act of 2002 (P.L. 107-252).

(e) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated.

(f) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation as they pertain to elections.

SEC. 7. Section 14217 of the Elections Code is amended to read:

14217. If the precinct board is unable to find a voter's name upon the index of registration, it shall inform the voter that he or she may cast a provisional ballot and the procedure for doing so. If the voter elects to cast a provisional ballot, the precinct board shall furnish the voter with a provisional ballot, in accordance with Section 14310.

SEC. 8. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official shall be entitled to vote a provisional ballot as follows:

(1) An elections official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of

registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official, provided the ballot cast by the voter contained only the candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish standards for a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(g) Any existing supply of envelopes marked ''special challenged ballot'' may be used until the supply is exhausted.

SEC. 8.5. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

(1) An election official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(g) Any existing supply of envelopes marked ''special challenged ballot'' may be used until the supply is exhausted.

SEC. 9. Section 14311 of the Elections Code is amended to read:

14311. (a) A voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may, at his or her option, and upon showing proof of current residence, vote on the day of the election at the polling place at which he or she is entitled to vote based on his or her current residence address, or at the office of the county elections official or other central location designated by that elections official. The voter shall be reregistered at the place of voting for future elections.

(b) Voters casting ballots under this section shall be required to vote by provisional ballot, as provided in Section 14310.

(c) The Secretary of State shall, by regulation, adopt procedures for determining the documents or other materials that constitute proof of residence for purposes of voting under this section. The documents or other materials so designated by the Secretary of State shall be consistent with the requirements for proof of residency imposed elsewhere for voters and for new registrants.

SEC. 9.5. Section 14311 of the Elections Code is amended to read:

14311. (a) A voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may, at his or her option, vote on the day of the election at the polling place at which he or she is entitled to vote based on his or her current residence address, or at the office of the county elections official or other central location designated by that elections official. The voter shall be reregistered at the place of voting for future elections.

(b) Voters casting ballots under this section shall be required to vote by provisional ballot, as provided in Section 14310.

SEC. 10. Section 14402.5 is added to the Elections Code, to read:

14402.5. If the time for closing the polls is extended pursuant to a court order, all votes cast during the time that the closing of the polls is extended shall be by provisional ballot. Any provisional ballots cast pursuant to this section shall be separated and held apart from other provisional ballots cast by voters prior to the time the closing of the polls was extended.

SEC. 11. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and

shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.

(b) For purposes of this section, ''home address'' means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), are confidential and shall not be disclosed to any person.

SEC. 12. Sections 1, 5, 7, and 9 of this act shall be implemented only to the extent that federal funds are made available pursuant to the Help America Vote Act of 2002 (P.L. 107-252).

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.

SEC. 14. Section 8.5 of this bill incorporates amendments to Section 14310 of the Elections Code proposed by both this bill and AB 190. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 14310 of the Elections Code, and (3) this bill is enacted after AB 190, in which case Section 8 of this bill shall not become operative.

SEC. 15. Section 9.5 of this bill amends Section 14311 of the Elections Code in the manner proposed by AB 1689. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 14311 of the Elections Code, and (3) this bill is enacted after AB 1689, in which case Section 9 of this bill shall not become operative.

CHAPTER 810

An act to amend Sections 13, 302, 321, 1303, 2187, 2194, 4101, 6086, 6201, 10405, 10411, 14105, 15641, 17502, 17503, and 19005 of, and to repeal Sections 6022, 6083, 6084, 6085, 6202, 6203, and 6204 of, the Elections Code, relating to elections.

[Approved by Governor October 10, 2003. Filed with
Secretary of State October 11, 2003.]

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

SECTION 1. Section 13 of the Elections Code is amended to read:

13. (a) No person shall be considered a legally qualified candidate for any office or party nomination for a partisan office under the laws of this state unless that person has filed a declaration of candidacy or statement of write-in candidacy with the proper official for the particular election or primary, or is entitled to have his or her name placed on a general election ballot by reason of having been nominated at a primary election, or having been selected to fill a vacancy on the general election ballot as provided in Section 8806, or having been selected as an independent candidate pursuant to Section 8304.

(b) Nothing in this section shall be construed as preventing or prohibiting any qualified voter of this state from casting a ballot for any person by writing the name of that person on the ballot, or from having that ballot counted or tabulated, nor shall any provision of this section be construed as preventing or prohibiting any person from standing or campaigning for any elective office by means of a ''write-in'' campaign. However, nothing in this section shall be construed as an exception to the requirements of Section 15341.

(c) It is the intent of the Legislature, in enacting this section, to enable the Federal Communications Commission to determine who is a ''legally qualified candidate'' in this state for the purposes of administering Section 315 of Title 47 of the United States Code.

SEC. 2. Section 302 of the Elections Code is amended to read:

302. ''Ballot card'' means a card or a number of cards upon which are printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. The ballot card shall also contain proper blank spaces to allow the voter to write in names not printed on the ballot unless a separate write-in ballot is used. The separate write-in ballot may be a paper ballot, a card, or the envelope used to enclose a ballot card. Determination of the format of a separate write-in ballot shall be within the discretion of the elections board. The separate write-in ballot shall provide a blank space followed by the word ''office'' and a second blank space followed by the word ''name'' for purposes of facilitating write-in votes for offices for which write-in votes may be cast, or may provide a space for writing in the name followed by a space for punching or slotting in order that the vote may be tabulated. All separate write-in ballots may, in the discretion of the elections board, have attached thereto two stubs that comply with Section 13261 regarding the stubs

attached to a ballot card, except that the information required under subdivisions (c) through (g) of Section 13261 and instructions to voters on how to vote for persons whose names do not appear on the ballot may be printed on the write-in ballot and not upon a stub. Any serial numbers appearing on the write-in ballot stubs need not be identical to the serial numbers appearing on the stubs attached to the ballot card or cards handed to the voter. Sections 13002 through 13007 shall not apply to the preparation and composition of separate write-in ballots authorized by this section. Sections 14403 and 14404 shall not apply to separate write-in ballots used in an election in which a punchcard voting system is used.

SEC. 3. Section 321 of the Elections Code is amended to read:

321. ''Elector'' means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election.

SEC. 4. Section 1303 of the Elections Code is amended to read:

1303. (a) Unless the principal act of a district provides that an election shall be held on one of the other dates specified in Chapter 1 (commencing with Section 1000) of Division 1, or except as provided in Section 1500, or except as provided in subdivision (b), a general district election to elect members of the governing board shall be held in each special district subject to Division 10 (commencing with Section 10000) on the first Tuesday following the first Monday in November of each odd-numbered year.

(b) Notwithstanding any other provision of law, a governing body of a special district may require, by resolution, that its elections of governing body members be held on the same day as the statewide general election. The resolution shall become operative upon the approval of the board of supervisors pursuant to Section 10404.

SEC. 5. Section 2187 of the Elections Code is amended to read:

2187. (a) Each county elections official shall send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county. The statement shall show the total number of voters in the county, the number registered as affiliated with each qualified political party, the number registered in nonqualified parties, and the number who declined to state any party affiliation. The statement shall also show the number of voters, by political affiliations, in each city, supervisorial district, Assembly district, Senate district, and congressional district located in whole or in part within the county.

(b) The Secretary of State, on the basis of the statements sent by the county elections officials and within 30 days after receiving those statements, shall compile a statewide list showing the number of voters, by party affiliations, in the state and in each county, city, supervisorial

district, Assembly district, Senate district, and congressional district in the state. A copy of this list shall be made available, upon request, to any elector in this state.

(c) Each county that uses data processing equipment to store the information set forth in the affidavit of registration shall send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State. Each county that does not use data processing storage shall send to the Secretary of State one copy of the index setting forth that information.

(d) The summary statements and the magnetic tape file copy or the index shall be sent at the following times:

(1) On the 135th day before each presidential primary and before each direct primary, with respect to voters registered on the 154th day before the primary election.

(2) Not less than 50 days prior to the primary election, with respect to voters registered on the 60th day before the primary election.

(3) Not less than 7 days prior to the primary election, with respect to voters registered before the 14th day prior to the primary election.

(4) Not less than 50 days prior to the general election, with respect to voters registered on the 60th day before the general election.

(5) Not less than 7 days prior to the general election, with respect to voters registered before the 14th day prior to the general election.

(6) On or before March 1 of each odd-numbered year, with respect to voters registered as of February 10.

(e) The Secretary of State may adopt regulations prescribing the content and format of the magnetic tape file or index referred to in subdivision (c) and containing the registered voter information from the affidavits of registration.

(f) The Secretary of State may adopt regulations prescribing additional regular reporting times, except that the total number of reporting times in any one calendar year shall not exceed 12.

(g) The Secretary of State shall make the information from the magnetic tape files or the printed indexes available, under conditions prescribed by the Secretary of State, to any candidate for federal, state, or local office, to any committee for or against any proposed ballot measure, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly or political research, or governmental purposes as determined by the Secretary of State.

SEC. 6. Section 2194 of the Elections Code is amended to read:

2194. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall be provided with respect to any voter, subject to the provisions of Section 2188, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) The home address of any voter shall be released whenever the person's vote is challenged pursuant to Sections 15105 to 15108, inclusive, or 14240 to 14253, inclusive. The address shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(c) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

SEC. 7. Section 2194 of the Elections Code is amended to read:

2194. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall be provided with respect to any voter, subject to the provisions of Section 2188, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) Notwithstanding any other provision of law, the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to voter registration records to comply with the requirements of the Help America Vote Act of 2002 (P.L. 107-252), are confidential and shall not be disclosed to any person.

(c) The home address of any voter shall be released whenever the person's vote is challenged pursuant to Sections 15105 to 15108, inclusive, or 14240 to 14253, inclusive. The address shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(d) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

SEC. 8. Section 4101 of the Elections Code is amended to read:

4101. Notwithstanding Sections 13300 and 13303, the elections official shall not commence to mail the combined sample ballot and mail ballot prior to the 29th day before the election and shall complete the mailing by the 10th day before the election.

SEC. 9. Section 6022 of the Elections Code is repealed.

SEC. 10. Section 6083 of the Elections Code is repealed.

SEC. 11. Section 6084 of the Elections Code is repealed.

SEC. 12. Section 6085 of the Elections Code is repealed.

SEC. 13. Section 6086 of the Elections Code is amended to read:

6086. On a day specified by the Democratic State Central Committee preceding the presidential primary election, at 3 p.m., the caucus chairperson in each congressional district shall convene a caucus for the purpose of electing potential delegates and alternate delegates. The steering committee of each candidate or uncommitted delegation shall have sole authority to establish rules and procedures, including the naming of caucus chairpersons, by which the caucuses of that candidate or uncommitted delegation shall be conducted. The rules and procedures shall be uniform statewide, and in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Each caucus shall elect a slate of delegate nominees in each congressional district pursuant to Article 2 (commencing with Section 6020), ranked in the manner specified by this section. The slate shall be transmitted to the steering committee of each candidate and uncommitted delegation.

Each participant at each caucus shall reside in, and be a registered Democrat of, the congressional district of the caucus he or she attends and each shall sign a statement of support for that presidential candidate or uncommitted delegation. Within five days after the convening of the caucus, the steering committee of each candidate or uncommitted delegation shall rank the delegate candidates from the slate of delegate candidates provided by each caucus pursuant to procedures in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Immediately thereafter, the chairperson of a steering committee shall file with the Secretary of State a statement containing the names of delegate candidates in ranked order from each congressional district. In all cases, the slate for each congressional district shall be equal to the number of delegates and alternate delegates allotted to each congressional district pursuant to Section 6023.

SEC. 14. Section 6201 of the Elections Code is amended to read:

6201. (a) District level delegate positions shall be allocated to presidential preferences through a primary proportional representation system.

(b) The 241 district-level delegates and 40 alternates shall be elected by preprimary caucuses to slate delegates followed by a presidential preference primary.

(1) The preprimary caucuses shall be conducted on a date and time specified by the Democratic State Central Committee.

(2) The presidential preference primary shall be conducted on the date provided by Section 1202.

(c) The 241 delegates and 40 alternates shall be apportioned to districts based on a formula giving equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

(d) (1) An individual may qualify as a candidate for district-level delegate or alternate to the Democratic National Convention by filing a statement of candidacy and pledge of support with the state chair at the party office at 1401 21st Street, Suite 100, Sacramento, California 95814. Statements can be requested from the state party beginning on a date specified by the Democratic State Central Committee. Candidacy statements can be returned beginning at a date and time specified by the Democratic State Central Committee and must be received by the party office no later than a date and time specified by the Democratic State Central Committee.

(2) All delegate candidates shall be identified as to presidential preference, uncommitted or unpledged status at all levels which determine presidential preference.

(e) The California primary election is a ''binding'' primary. Accordingly, delegate and alternate positions shall be allocated so as to fairly reflect the expressed presidential or uncommitted status of the primary voters in each district. Therefore, the national convention delegates elected at the district level shall be allocated in proportion to the percentage of the primary vote won in that district by each preference, except that preferences falling below a 15 percent threshold shall not be awarded any delegates or alternates.

(f) If no presidential preference reaches a 15 percent threshold, the threshold shall be the percentage of the vote received at each level of the delegate selection process by the front-runner minus 10 percent.

(g) Presidential candidates shall certify their authorized representatives to the state party chair by a date and time specified by the Democratic State Central Committee. The state party chair shall convey to the presidential candidate, or that candidate's authorized representative or representatives, by a date and time specified by the Democratic State Central Committee, a list of all persons who have filed

for delegate or alternate pledged to that presidential candidate. Each presidential candidate, or that candidate's authorized representative or representatives, shall file with the state party chair by a date and time specified by the Democratic State Central Committee, a list of all the candidates he or she has approved, provided that approval is given to at least three times the number of candidates for delegate and three times the number of candidates for alternates to be selected. Failure to respond shall be deemed approval of all delegate and alternate candidates submitted to the presidential candidate unless the presidential candidate, or the candidate's authorized representative or representatives, signifies otherwise in writing to the state party chair no later than a date specified by the Democratic State Central Committee.

(h) Candidate and uncommitted caucuses shall be held on a date and time specified by the Democratic State Central Committee to elect a slate of potential delegates equal to at least the number of delegates plus alternates allocated to the congressional district. The California delegation shall be equally divided between delegate men and delegate women, and alternate men and alternate women. These goals apply to the California delegation as a whole. Delegates and alternates shall be considered separate groups for purposes of achieving equal division.

Provisions for achieving equal division at the district level shall be as follows: Each candidate and uncommitted caucus shall elect a slate of potential delegates equal to at least the number of delegates plus alternates allocated to that congressional district. Potential delegates shall be ranked pursuant to procedures in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Following the primary, delegate and alternate positions allocated to a presidential candidate or uncommitted delegation shall be filled from the list of ranked potential delegates in the order in which they are ranked.

(i) The State Democratic Chair shall certify in writing to the Secretary of the Democratic National Committee (DNC) the election of the state's district level delegates and alternates to the Democratic National Convention within three days after their election.

SEC. 15. Section 6202 of the Elections Code is repealed.

SEC. 16. Section 6203 of the Elections Code is repealed.

SEC. 17. Section 6204 of the Elections Code is repealed.

SEC. 18. Section 10405 of the Elections Code is amended to read:

10405. Notwithstanding any other provision of law, the Registrar-Recorder of the County of Los Angeles and the Registrar of Voters of Orange County may, pursuant to agreement between those counties, perform, either on behalf of the other, any and all duties relating to the conducting of the election, the counting of votes, and any other election procedures to the extent that those duties are for the conduct of

an election of governing board members for any school district whose territory lies within both the County of Los Angeles and Orange County, pursuant to the consolidation of that election with a primary, municipal, or general election under Sections 1302 and 10404.5.

SEC. 19. Section 10411 of the Elections Code is amended to read:

10411. In case of the consolidation of any election called by the legislative body of a city, district or other political subdivision with an election held in the county or counties in which the city, district or other political subdivision is situated, the governing body of the city, district or other political subdivision may authorize the board of supervisors to canvass the returns of the election. If this authority is given:

(a) The election shall be held in all respects as if there were only one election.

(b) Only one form of ballot shall be used.

(c) The returns of the election need not be canvassed by the legislative body of the authorizing city, district or other political subdivision.

If such authority is given to the board of supervisors, the canvass shall be made in accordance with Article 1 (commencing with Section 15300) of Chapter 4 of Division 15.

SEC. 20. Section 14105 of the Elections Code is amended to read:

14105. The elections official shall furnish to the precinct officers all of the following:

(a) Printed copies of the indexes.

(b) Necessary printed blanks for the roster, tally sheets, lists of voters, declarations, and returns.

(c) Envelopes in which to enclose returns.

(d) Not less than six nor more than 12 instruction cards to each precinct for the guidance of voters in obtaining and marking their ballots. On each card shall be printed necessary instructions and the provisions of Sections 14225, 14279, 14280, 14287, 14291, 14295, 15271, 15272, 15273, 15276, 15277, 15278, 18370, 18380, 18403, 18563, and 18569.

(e) A digest of the election laws with any further instructions the county elections official may desire to make.

(f) An American flag of sufficient size to adequately assist the voter in identifying the polling place. The flag is to be erected at or near the polling place on election day.

(g) A ballot container, properly marked on the outside indicating its contents.

(h) When it is necessary to supply additional ballot containers, these additional containers shall also be marked on the outside, indicating their contents.

(i) Sufficient ink pads and stamps for each booth. The stamps shall be one solid piece and shall be made so that a cross (+) may be made with either end. If ballots are to be counted by vote tabulating equipment, an

adequate supply of other approved voting devices shall be furnished. All voting stamps or voting devices shall be maintained in good usable condition.

(j) When a candidate or candidates have qualified to have his or her or their names counted pursuant to Article 3 (commencing with Section 15340) of Chapter 4 of Division 15, a sufficient number of ink pens or pencils in the voting booths for the purpose of writing in on the ballot the name of the candidate or candidates.

(k) A sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her precinct location. The card shall state that the voter may call collect during polling hours.

(*l*) An identifying badge or insignia for each member of the precinct board. The member shall print his or her name and the precinct number thereon and shall wear the badge or insignia at all times in the performance of duties, so as to be readily identified as a member of the precinct board by all persons entering the polling place.

(m) Facsimile copies of the ballot containing ballot measures and ballot instructions printed in Spanish or other languages as provided in Section 14201.

(n) Sufficient copies of the notices to be posted on the indexes used at the polls. The notice shall read as follows: ''This index shall not be marked in any manner except by a member of the precinct board acting pursuant to Section 14297 of the Elections Code. Any person who removes, tears, marks, or otherwise defaces this index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted, is guilty of a misdemeanor.''

(o) A roster of voters for each precinct in the form prescribed in Section 14107.

(p) In addition, the elections official may, with the approval of the board of supervisors, furnish the original books of affidavits of registration or other material necessary to verify signatures to the precinct officers.

This section shall become operative on January 1, 1990.

SEC. 21. Section 14105 of the Elections Code is amended to read:

14105. The elections official shall furnish to the precinct officers all of the following:

(a) Printed copies of the indexes.

(b) Necessary printed blanks for the roster, tally sheets, lists of voters, declarations, and returns.

(c) Envelopes in which to enclose returns.

(d) Not less than six nor more than 12 instruction cards to each precinct for the guidance of voters in obtaining and marking their ballots.

On each card shall be printed necessary instructions and the provisions of Sections 14225, 14279, 14280, 14287, 14291, 14295, 15271, 15272, 15273, 15276, 15277, 15278, 18370, 18380, 18403, 18563, and 18569.

(e) A digest of the election laws with any further instructions the county elections official may desire to make.

(f) An American flag of sufficient size to adequately assist the voter in identifying the polling place. The flag is to be erected at or near the polling place on election day.

(g) A ballot container, properly marked on the outside indicating its contents.

(h) When it is necessary to supply additional ballot containers, these additional containers shall also be marked on the outside, indicating their contents.

(i) Sufficient ink pads and stamps for each booth. The stamps shall be one solid piece and shall be made so that a cross (+) may be made with either end. If ballots are to be counted by vote tabulating equipment, an adequate supply of other approved voting devices shall be furnished. All voting stamps or voting devices shall be maintained in good usable condition.

(j) When a candidate or candidates have qualified to have his or her or their names counted pursuant to Article 3 (commencing with Section 15340) of Chapter 4 of Division 15, a sufficient number of ink pens or pencils in the voting booths for the purpose of writing in on the ballot the name of the candidate or candidates.

(k) A sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her precinct location. The card shall state that the voter may call collect during polling hours.

(*l*) An identifying badge or insignia for each member of the precinct board. The member shall print his or her name and the precinct number thereon and shall wear the badge or insignia at all times in the performance of duties, so as to be readily identified as a member of the precinct board by all persons entering the polling place.

(m) Facsimile copies of the ballot containing ballot measures and ballot instructions printed in Spanish or other languages as provided in Section 14201.

(n) Sufficient copies of the notices to be posted on the indexes used at the polls. The notice shall read as follows: ''This index shall not be marked in any manner except by a member of the precinct board acting pursuant to Section 14297 of the Elections Code. Any person who removes, tears, marks, or otherwise defaces this index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted, is guilty of a misdemeanor.''

(o) A roster of voters for each precinct in the form prescribed in Section 14107.

(p) In addition, the elections official may, with the approval of the board of supervisors, furnish the original books of affidavits of registration or other material necessary to verify signatures to the precinct officers.

(q) Printed copies of the Voter Bill of Rights, as supplied by the Secretary of State. The Voter Bill of Rights shall be conspicuously posted both inside and outside every polling place.

This section shall become operative on January 1, 1990.

SEC. 22. Section 15641 of the Elections Code is amended to read:

15641. Section 15001 shall apply unless a court orders the program held pending the conclusion of litigation challenging the outcome of an election. If court action or an official recount is initiated while the program is on deposit, the Secretary of State shall make the program available to the court or the elections official in whose jurisdiction the court action or recount takes place, upon written request.

SEC. 23. Section 17502 of the Elections Code is amended to read:

17502. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The elections official shall preserve the following records reflecting the appointment of precinct officials until 22 months from the date of any election.

(1) Precinct officers' declaration of intention required by Section 12321.

(2) Precinct board member applications specified in Section 12300.

(3) Order appointing members of the several precinct boards and designating the polling places specified in Section 12286.

(4) Nominations for appointment to the precinct board by the county central committee of each qualified political party specified in Section 12306.

(5) Written orders appointing precinct board members or designating the polling place for the precinct pursuant to Section 12327.

SEC. 24. Section 17503 of the Elections Code is amended to read:

17503. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17502. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The elections official shall preserve the following records reflecting the appointment of precinct officials until six months from the date of an election.

(1) Precinct officers' declaration of intention required by Section 12321.

(2) Precinct board member applications specified in Section 12300.

(3) Order appointing members of the several precinct boards and designating the polling places specified in Section 12286.

(4) Nominations for appointment to the precinct board by the county central committee of each qualified political party specified in Section 12306.

(5) Written orders appointing precinct board members or designating the polling place for the precinct pursuant to Section 12327.

SEC. 25. Section 19005 of the Elections Code is amended to read:

19005. In the case of electrical failure or other emergency, the official conducting the election may direct that ballots may be marked by pencil or ink. In that event, the elections official may duplicate the voted ballot cards as provided in Section 15210 and count the duplicate ballots by automatic tabulating device, or may count the voted ballots pursuant to Article 5 (commencing with Section 15270) of Chapter 3 of Division 15.

SEC. 26. Section 7 of this bill incorporates amendments to Section 2194 of the Elections Code proposed by both this bill and SB 613. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 2194 of the Elections Code, and (3) this bill is enacted after SB 613, in which case Section 6 of this bill shall not become operative.

SEC. 27. Section 21 of this bill incorporates amendments to Section 14105 of the Elections Code proposed by both this bill and AB 177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 14105 of the Elections Code, and (3) this bill is enacted after AB 177, in which case Section 20 of this bill shall not become operative.

CHAPTER 811

An act to amend Section 5091 of the Education Code, to amend Sections 3103, 3304, 3500, 4101, 7227, 7422, 7672, 7772, 8105, 8202, 8204, 10220, 10411, 11020, 13113, and 14242 of, to repeal Section 8023 and Chapter 2 (commencing with Section 8350) of Part 2 of Division 18 of, and to repeal and add Sections 7770 and 8022, of, the Elections Code, to amend Section 26802 of the Government Code, and to amend Section 9358 of the Public Resources Code, relating to elections.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 5091 of the Education Code is amended to read:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to $1^1/_2$ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with registered voters of less than 2,000 persons, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election to be conducted no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) (1) Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.

(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(C) None of the text or other language of the petition shall appear in less than six-point type.

(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

SEC. 2. Section 3103 of the Elections Code is amended to read:

3103. (a) Notwithstanding any other provision of the law, a special absentee voter who qualifies pursuant to this section may apply for a special absentee voter ballot. Any application made pursuant to this section that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) If a special absentee voter submits an application containing a statement that provides that due to military or other contingencies that preclude normal mail delivery, as specified by the voter, the voter cannot vote an absentee ballot during the normal absentee voting period, and the

voter is otherwise qualified to vote as a special absentee voter, the elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State, or a ballot and voter registration card if required by Section 3100. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section, except that prior to election day, special absentee voter ballots shall be secured separately in a sealed ballot box reserved for that purpose.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and the military or other contingency does not exist during the normal absentee voting period, that voter may make an application for an absentee ballot pursuant to Sections 3100 and 3101. If an application is made pursuant to this subdivision, the elections official shall reject the voted ballot previously cast and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official shall send to the qualified special absentee voter either by mail or facsimile transmission the special absentee ballot or, if available, an absent's voter ballot pursuant to Chapter 1 (commencing with Section 3000).

SEC. 2.5. Section 3103 of the Elections Code is amended to read:

3103. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any

specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and an application for an absentee ballot pursuant to Section 3101, the elections official shall reject the voted ballot previously cast, cancel the voter's permanent absent voter status, and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official may send to the qualified special absentee voter either by mail, facsimile, or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

SEC. 2.6. Section 3103 of the Elections Code is amended to read:

3103. (a) Notwithstanding any other provision of the law, a special absentee voter who qualifies pursuant to this section may apply for a special absentee voter ballot. Any application made pursuant to this section that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) If a special absentee voter submits an application containing a statement that provides that due to military or other contingencies that preclude normal mail delivery, as specified by the voter, the voter cannot vote an absentee ballot during the normal absentee voting period, and the voter is otherwise qualified to vote as a special absentee voter, the elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State, or a ballot and voter registration card if required by Section 3100. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific

candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section, except that prior to election day, special absentee voter ballots shall be secured separately in a sealed ballot box reserved for that purpose.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and the military or other contingency does not exist during the normal absentee voting period, that voter may make an application for an absentee ballot pursuant to Sections 3100 and 3101. If an application is made pursuant to this subdivision, the elections official shall reject the voted ballot previously cast and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official shall send to the qualified special absentee voter either by mail or facsimile transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

SEC. 2.7. Section 3103 of the Elections Code is amended to read:

3103. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and an application for an absentee ballot pursuant to Section 3101, the elections official shall reject the voted ballot previously cast, cancel the voter's permanent absent voter status, and process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official may send to the qualified special absentee voter either by mail, facsimile, or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

SEC. 3. Section 3304 of the Elections Code is amended to read:

3304. (a) A voter described in Section 3302 may apply for an absent voter ballot. Any application made pursuant to this section that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) If the voter submits an application containing a statement that provides that due to contingencies that preclude normal mail delivery, as specified by the voter, the voter cannot vote an absentee ballot during the normal absentee voting period, and the voter is otherwise qualified to vote as provided in this chapter, the elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State, or a ballot and voter registration card if required by Section 3307. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and for whom the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking the nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination.

(d) The elections official shall receive and canvass the absent voter ballots described in this section under the same procedure as other absent voter ballots, insofar as that procedure is not inconsistent with this section, except that prior to election day, the absent voter ballots described in this section shall be secured separately in a sealed ballot box reserved for that purpose.

SEC. 3.5. Section 3304 of the Elections Code is amended to read:

3304. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and for whom the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking the nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name is written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass the absent voter ballots described in this section under the same procedure as other absent voter ballots, insofar as that procedure is not inconsistent with this section.

SEC. 4. Section 3500 of the Elections Code is amended to read:

3500. Any new citizen is eligible to register and vote at the office of the county elections official at any time beginning on the 14th day before an election and ending on the seventh day prior to election day.

SEC. 5. Section 4101 of the Elections Code is amended to read:

4101. Notwithstanding Sections 12111, 13300, and 13303, the elections official shall not commence to mail the combined sample ballot and mail ballot prior to the 29th day before the election and shall complete the mailing by the 10th day before the election.

SEC. 5.5. Section 4101 of the Elections Code is amended to read:

4101. Notwithstanding Sections 13300 and 13303, the elections official shall not commence to mail the combined sample ballot and mail ballot prior to the 29th day before the election and shall complete the mailing by the 10th day before the election.

SEC. 6. Section 7227 of the Elections Code is amended to read:

7227. In each county the name of each candidate for member of a committee shall appear upon the ballot only upon the filing of a nomination paper pursuant to Article 2 (commencing with Section 8020) to Article 6 (commencing with Section 8100), inclusive, of Chapter 1 of Part 1 of Division 8, signed in his or her behalf by the voters of the Assembly or supervisorial district in which he or she is a candidate.

SEC. 7. Section 7422 of the Elections Code is amended to read:

7422. In each county the name of each candidate for member of a committee shall appear upon the ballot only upon the filing of a nomination paper pursuant to Article 2 (commencing with Section 8020) to Article 6 (commencing with Section 8100), inclusive, of Chapter 1 of

Part 1 of Division 8, signed on his or her behalf by the voters of the Assembly or supervisorial district in which he or she is a candidate.

SEC. 8. Section 7672 of the Elections Code is amended to read:

7672. In each county the name of each candidate for member of a committee shall appear upon the ballot only upon the filing of a nomination paper pursuant to Article 2 (commencing with Section 8020) to Article 6 (commencing with Section 8100), inclusive, of Chapter 1 of Part 1 of Division 8, signed on his or her behalf by the voters of the Assembly or supervisorial district in which he or she is a candidate.

SEC. 9. Section 7770 of the Elections Code is repealed.

SEC. 10. Section 7770 is added to the Elections Code, to read:

7770. The state party chairperson, no later than the 135th day before the direct primary election, shall notify the Secretary of State whether or not a county central committee election will be held. In the event that a county central committee election is not held, a county central committee will be convened pursuant to rules adopted by the party.

SEC. 11. Section 7772 of the Elections Code is amended to read:

7772. In each county, the name of each candidate for member of central committees shall appear on the ballot only if she or he has done either of the following:

(a) Filed a nomination paper pursuant to Article 2 (commencing with Section 8020) to Article 6 (commencing with Section 8100), inclusive, of Chapter 1 of Part 1 of Division 8, signed in the candidate's behalf by the voters of the central committee election district in which she or he is a candidate.

(b) Qualified to have her or his name printed on the direct primary ballot as a candidate for the Peace and Freedom Party nomination to a partisan public office.

SEC. 12. Section 8022 of the Elections Code is repealed.

SEC. 13. Section 8022 is added to the Elections Code, to read:

8022. Notwithstanding Section 8020 or any other provision of the law, if nomination documents for an incumbent state Senator, Member of the Assembly, state constitutional officer, or Insurance Commissioner are not delivered by 5 p.m. on the 88th day before the direct primary election, any person other than the person who was the incumbent on the 88th day shall have until 5 p.m. on the 83rd day before the election to file nomination documents for the elective office.

However, if the incumbent's failure to file nomination documents is because he or she has already served the maximum number of terms permitted by the California Constitution for that office, there shall be no extension of the period for filing the nomination documents.

SEC. 14. Section 8023 of the Elections Code is repealed.

SEC. 15. Section 8105 of the Elections Code is amended to read:

8105. The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. All filing fees received by the Secretary of State and elections officials are nonrefundable.

SEC. 16. Section 8202 of the Elections Code is amended to read:

8202. The numerically designated offices shall be grouped and arranged on all ballots in numerical order. A person may not be a candidate or have his or her name printed upon any ballot as a candidate for any numerically designated office other than the one indicated by him or her in his or her nomination papers.

SEC. 17. Section 8204 of the Elections Code is amended to read:

8204. (a) If an incumbent of a judicial office dies on or before the last day prescribed for the filing of nomination papers, or for any reason fails to file his or her nomination papers by the last day prescribed for the filing of the papers, an additional five days shall be allowed for the filing of nomination papers for the office.

(b) Any qualified person other than the person who was the incumbent, may file nomination papers for the office during the extended period.

SEC. 18. Chapter 2 (commencing with Section 8350) of Part 2 of Division 8 of the Elections Code is repealed.

SEC. 19. Section 10220 of the Elections Code is amended to read:

10220. Candidates may be nominated for any of the elective offices of the city in the following manner:

Not earlier than the 113th day nor later than the 88th day before a municipal election during normal office hours, as posted, the voters may nominate candidates for election by signing a nomination paper. Each candidate shall be proposed by not less than 20 nor more than 30 voters in a city of 1,000 registered voters or more, and not less than five nor more than 10 voters in a city of less than 1,000 registered voters, but only one candidate may be named in any one nomination paper. No voter may sign more than one nomination paper for the same office, and in the event the voter does so, that voter's signature shall count only on the first nomination paper filed which contains the voter's signature. Nomination papers subsequently filed and containing that voter's signature shall be considered as though that signature does not appear thereon. Each seat on the governing body is a separate office. Any person registered to vote at the election, and qualified to vote for the elective

office of the city for which the nomination is made, may circulate a nomination paper. Only one person may circulate each nomination paper. Where there are full terms and short terms to be filled, the term shall be specified in the nomination paper.

SEC. 20. Section 10411 of the Elections Code is amended to read:

10411. In case of the consolidation of any election called by the legislative body of a city, district, or other political subdivision with an election held in the county or counties in which the city, district, or other political subdivision is situated, the governing body of the city, district, or other political subdivision may authorize the board of supervisors to canvass the returns of the election. If this authority is given:

(a) The election shall be held in all respects as if there were only one election.

(b) Only one form of ballot shall be used.

(c) The returns of the election need not be canvassed by the legislative body of the authorizing city, district, or other political subdivision.

If the authority is given to the board of supervisors, the canvass shall be made in accordance with Article 1 (commencing with Section 15300) of Chapter 4 of Division 15.

SEC. 21. Section 10411 of the Elections Code is amended to read:

10411. In case of the consolidation of any election called by the legislative body of a city, district, or other political subdivision with an election held in the county or counties in which the city, district, or other political subdivision is situated, the governing body of the city, district, or other political subdivision may authorize the board of supervisors to canvass the returns of the election. If this authority is given:

(a) The election shall be held in all respects as if there were only one election.

(b) Only one form of ballot shall be used.

(c) The returns of the election need not be canvassed by the legislative body of the authorizing city, district or other political subdivision.

If the authority is given to the board of supervisors, the canvass shall be made in accordance with Article 1 (commencing with Section 15300) of Chapter 4 of Division 15.

SEC. 22. Section 11020 of the Elections Code is amended to read:

11020. The notice of intention shall contain all of the following:

(a) The name and title of the officer sought to be recalled.

(b) A statement, not exceeding 200 words in length, of the reasons for the proposed recall.

(c) The printed name, signature, and residence address of each of the proponents of the recall. If a proponent cannot receive mail at the residence address, he or she must provide an alternative mailing address. The minimum number of proponents is 10, or equal to the number of

signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.

(d) The provisions of Section 11023.

SEC. 23. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing on the first weekday following the last possible day of filing for the election according to subdivision (a) of Section 13112.

(b) If two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

SEC. 24. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing on the first weekday following the last possible day of filing for the election according to subdivision (a) of Section 13112.

(b) Except as provided for runoff elections in subdivision (d), if two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

(d) If two randomized alphabets are drawn for the same election, the results of the second randomized alphabet drawing shall be clearly set apart from the first and shall be labeled ''FOR USE IN A RUNOFF ELECTION ONLY.''

SEC. 25. Section 14242 of the Elections Code is amended to read:

14242. The ground for challenge set forth in paragraph (2) of subdivision (a) of Section 14240 shall not apply to any person duly registered as a voter in any precinct in California and moving from that precinct within 14 days prior to an election.

SEC. 26. Section 26802 of the Government Code is amended to read:

26802. Except as provided by law, the county clerk shall register as voters any electors who apply for registration and shall perform any other duties required of him or her by the Elections Code. In those counties in which a registrar of voters office has been established, the registrar of voters shall discharge all duties vested by law in the county clerk that relate to and are a part of election procedure.

SEC. 27. Section 9358 of the Public Resources Code is amended to read:

9358. Nomination of candidates shall be in writing and signed by at least five landowners of the district. Nominations shall be filed with the county elections official of the principal county.

SEC. 28. 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. 29. (a) Section 2.5 of this bill incorporates amendments to Section 3103 of the Elections Code proposed by both this bill and AB 188. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3103 of the Elections Code, and (3) AB 1679 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 188, in which case Sections 2, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.6 of this bill incorporates amendments to Section 3103 of the Elections Code proposed by both this bill and AB 1679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3103 of the

Elections Code, (3) AB 188 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1679, in which case Sections 2, 2.5, and 2.7 of this bill shall not become operative.

(c) Section 2.7 of this bill incorporates amendments to Section 3103 of the Elections Code proposed by this bill, AB 188, and AB 1679. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 3103 of the Elections Code, and (3) this bill is enacted after AB 188 and AB 1679, in which case Sections 2, 2.5, and 2.6 of this bill shall not become operative.

SEC. 30. Section 3.5 of this bill incorporates amendments to Section 3304 of the Elections Code proposed by both this bill and AB 188. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3304 of the Elections Code, and (3) this bill is enacted after AB 188, in which case Section 3 of this bill shall not become operative.

SEC. 31. Section 5.5 of this bill incorporates amendments to Section 4101 of the Elections Code proposed by both this bill and AB 1679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 4101 of the Elections Code, and (3) this bill is enacted after AB 1679, in which case Section 5 of this bill shall not become operative.

SEC. 32. Section 21 of this bill incorporates amendments to Section 10411 of the Elections Code proposed by both this bill and AB 1679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 10411 of the Elections Code, and (3) this bill is enacted after AB 1679, in which case Section 20 of this bill shall not become operative.

SEC. 33. Section 24 of this bill incorporates amendments to Section 13113 of the Elections Code proposed by both this bill and AB 718. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 13113 of the Elections Code, and (3) this bill is enacted after AB 718, in which case Section 23 of this bill shall not become operative.

CHAPTER 812

An act to amend Sections 358, 358.1, 361.3, 16002, and 16501.1 of, and to add Sections 16010.4, 16010.5, 16010.6, and 16503.5 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 358 of the Welfare and Institutions Code is amended to read:

358. (a) After finding that a child is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the child. Prior to making a finding required by this section, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the child, as follows:

(1) If the child is detained during the continuance, and the social worker is not alleging that subdivision (b) of Section 361.5 is applicable, the continuance shall not exceed 10 judicial days. The court may make an order for detention of the child or for the child's release from detention, during the period of continuance, as is appropriate.

(2) If the child is not detained during the continuance, the continuance shall not exceed 30 days after the date of the finding pursuant to Section 356. However, the court may, for cause, continue the hearing for an additional 15 days.

(3) If the social worker is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The social worker shall notify each parent of the content of subdivision (b) of Section 361.5 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that his or her parental rights may be terminated within the timeframes specified by law.

(b) Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful. In any judgment and order of disposition, the court shall specifically state that the social study made by the social worker and the study or evaluation made by the child advocate appointed by the court, if there be any, has been read and considered by the court in arriving at its judgment and order of disposition. Any social study or report submitted to the court by the social worker shall include the individual child's case plan developed pursuant to Section 16501.1.

(c) If the court finds that a child is described by subdivision (h) of Section 300 or that subdivision (b) of Section 361.5 may be applicable, the court shall conduct the dispositional proceeding pursuant to subdivision (c) of Section 361.5.

SEC. 2. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) (1) Whether the child has siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(2) The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interest.

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be

limited. If the study or evaluation makes that recommendation, it shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) Whether the child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(g) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(h) The appropriateness of any relative placement pursuant to Section 361.3. However, this consideration may not be cause for continuance of the dispositional hearing.

(i) Whether the caregiver desires, and is willing, to provide legal permanency for the child if reunification is unsuccessful.

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

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

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

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

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

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

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

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.

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

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

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

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

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

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

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

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

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

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

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

(8) The safety of the relative's home. For a relative to be considered appropriate to receive placement of a child under this section, the relative's home shall first be approved pursuant to the process and standards described in subdivision (d) of Section 309.

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

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

(c) For purposes of this section:

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

(2) ''Relative'' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by

the words ''great,'' ''great-great'' or ''grand'' or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

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

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

SEC. 4. Section 16002 of the Welfare and Institutions Code is amended to read:

16002. (a) It is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child's family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to develop and maintain sibling relationships. If siblings are not placed together in the same home, the social worker shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why those efforts are not appropriate. When placement of siblings together in the same home is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by clear and convincing evidence that sibling interaction is detrimental to a child or children, the reasons for the determination shall be noted in the court order, and interaction shall be suspended.

(c) When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review

hearing pursuant to Section 366. When the court determines that sibling interaction can be safely resumed, that determination shall be noted in the court order and the case plan shall be revised to provide for sibling interaction.

(d) If the case plan for the child has provisions for sibling interaction, the child, or his or her parent or legal guardian shall have the right to comment on those provisions. If a person wishes to assert a sibling relationship with a dependent child, he or she may file a petition in the juvenile court having jurisdiction over the dependent child pursuant to subdivision (b) of Section 388.

(e) If parental rights are terminated and the court orders a dependent child to be placed for adoption, the licensed county adoption agency or the State Department of Social Services shall take all of the following steps to facilitate ongoing sibling contact, except in those cases provided in subdivision (b) where the court determines by a preponderance of the evidence that sibling interaction is detrimental to the child:

(1) Include in training provided to prospective adoptive parents information about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships.

(2) Provide prospective adoptive parents with information about siblings of the child, except the address where the siblings of the children reside. However, this address may be disclosed by court order for good cause shown.

(3) Encourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child who is the subject of a petition for adoption and any siblings of this child.

(f) Information regarding sibling interaction, contact, or visitation that has been authorized or ordered by the court shall be provided to the foster parent, relative caretaker, or legal guardian of the child as soon as possible after the court order is made, in order to facilitate the interaction, contact, or visitation.

(g) As used in this section, ''sibling'' means a child related to another person by blood, adoption, or affinity through a common legal or biological parent.

(h) The court documentation on sibling placements required under this section shall not require the modification of existing court order forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 5. Section 16010.4 is added to the Welfare and Institutions Code, to read:

16010.4. The Legislature finds and declares all of the following:

(a) The State of California is guardian to more than 90,000 children in foster care, more than any other state in the nation. As of 2002, California has a disproportionately high number of children in foster

care. While the state is home to 12 percent of the nation's population, it guards over 20 percent of the nation's children in its foster care system. Thirty-five percent of foster children live with relatives.

(b) Foster parents are one of the most important sources of information about the children in their care. Courts, lawyers, and social workers should have the benefit of caregivers' perceptions. Both federal and state law recognize the importance of foster parents' participation in juvenile court proceedings. Federal law requires that foster parents and other caregivers receive expanded opportunities for notice, the right to participate in dependency court review and permanency hearings, and the right to communicate concerns to the courts. State law similarly provides that caregivers may submit their concerns to courts in writing.

(c) It is in the children's best interests that their caregivers are privy to important information about them. This information is necessary to obtain social and health services for children, enroll children in school and extracurricular activities, and update social workers and court personnel about important developments affecting foster children.

(d) Most school districts and extracurricular organizations require proof of age before enrolling a child in their programs. Moreover, caregivers are required to obtain a medical appointment for their foster children within the first month of receiving the children into their homes. It would therefore be in both the children's and the caregivers' best interests to be provided with any available medical information, medications and instructions for use, and identifying information about the children upon receiving the children into their homes.

(e) Caregivers should have certain basic information in order to provide for the needs of children placed in their care, including all of the following:

(1) The name, mailing address, telephone number, and facsimile number of the child's social worker and the social worker's supervisor.

(2) The name, mailing address, telephone number, and facsimile number of the child's attorney and court-appointed special advocate (CASA), if any.

(3) The name, address, and department number of the juvenile court in which the child's juvenile court case is pending.

(4) The case number assigned to the child's juvenile court case.

(5) A copy of the child's birth certificate, passport, or other identifying documentation of age as may be required for enrollment in school and extracurricular activities.

(6) The child's State Department of Social Services identification number.

(7) The child's Medi-Cal identification number or group health insurance plan number.

(8) Medications or treatments in effect for the child at the time of placement, and instructions for their use.

(9) A plan outlining the child's needs and services, including information on family and sibling visitation.

(f) Caregivers should have knowledge of all of the following:

(1) Their right to receive notice of all review and permanency hearings concerning the child during the placement.

(2) Their right to attend those hearings or submit information they deem relevant to the court in writing.

(3) The ''Caregiver Information Form'' (Judicial Council Form JV-290), which allows the caregiver to provide information directly to the court.

(4) Information about and referrals to any existing services, including transportation, translation, training, forms, and other available services.

(5) The caregiver's obligation to cooperate with any reunification, concurrent, or permanent planning for the child.

(6) Any known siblings or half-siblings of the child, whether the child has, expects, or desires to have contact or visitation with any or all siblings, and how and when caregivers facilitate the contact or visitation.

(g) Courts should know, at the earliest possible date, the interest of the caretaker in providing legal permanency for the child.

SEC. 6. Section 16010.5 is added to the Welfare and Institutions Code, to read:

16010.5. (a) When initially placing a child into foster care or kinship care, and within 48 hours of any subsequent placement of that child, the placing agency shall provide to the child's caretaker both of the following:

(1) Prescribed medications for the child that are in the possession of the placing agency, with instructions for the use of the medication.

(2) Information regarding any treatments that are known to the placing agency and that are in effect for the child at the time of the placement.

(b) As soon as possible after placing a child into foster care or kinship care, and no later than 30 days after placing the child, the placing agency shall provide to the child's caregiver any available documentation or proof of the child's age that may be required for enrollment in school or activities that require proof of age.

(c) Within 30 days of receiving a copy of a child's birth certificate or passport, a placing agency shall provide a copy of that document to the child's caregiver.

(d) Nothing shall preclude the placing agency from providing the name, mailing address, telephone number, and facsimile number of the child's attorney and the child's court-appointed special advocate, if any, to the child or the child's caregiver upon their request.

SEC. 7. Section 16010.6 is added to the Welfare and Institutions Code, to read:

16010.6. (a) As soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver. This requirement is declaratory of existing law.

(b) The Judicial Council shall adopt a rule of court directing the attorney of a dependent child of the juvenile court, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule shall not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

SEC. 8. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the

court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or

made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of

guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 8.5. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted

pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the

child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(j) When a child who is 10 years of age or older has been in out-of-home placement with a nonrelative for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed with a relative to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall

be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 8.7. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from

his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family

reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 8.9. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant

life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case

plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and

individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) When a child who is 10 years of age or older has been in out-of-home placement with a nonrelative for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed with a relative to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(*l*) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 9. Section 16503.5 is added to the Welfare and Institutions Code, to read:

16503.5. (a) A placing agency shall provide a caregiver placement agreement to the child's caregiver at the time of the child's placement with that caregiver.

(b) For purposes of this part, ''caregiver placement agreement'' means a written agreement between the placing agency and the child's

caregiver. The department shall approve the format and content of the placement agreement form to be used by a placing agency.

(c) The agreement shall describe the terms and conditions of the placement and any agreements made by the placing agency and the child's caregiver.

(d) The agreement shall provide, at a minimum, the contact information for the placing agency's social worker and the worker's supervisor, including, but not limited to, telephone numbers, facsimile numbers, and identifying information about the child, including, but not limited to, the child's social security number, if available, the child's Medi-Cal number or group health plan number and information, if available, and the child's State Department of Social Services identification number.

(e) A county placing agency may modify the forms to meet local needs by adding to the form requirements for information, but may not delete the form's core elements as determined by the department.

SEC. 10. Section 16010.6 of the Welfare and Institutions Code, as added by Section 7 of this act, is declaratory of existing law and intended to codify the holding in In re Robert A. (1992) 4 Cal.App.4th 174, at page 192, with respect to the obligation of the county welfare department or county placing agency to give notice to the attorney of a minor in foster placement as soon as the department or agency makes a decision on the placement or a proposed change in placement.

SEC. 11. (a) Section 8.5 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 408. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, (3) AB 1151 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 408, in which case Sections 8, 8.7, and 8.9 of this bill shall not become operative.

(b) Section 8.7 of this bill incorporates amendments to Section 16501 of the Welfare and Institutions Code proposed by both this bill and AB 1151. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 16501 of the Welfare and Institutions Code, (3) AB 408 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1151, in which case Sections 8, 8.5, and 8.9 of this bill shall not become operative.

(c) Section 8.9 of this bill incorporates amendments to Section 16501 of the Welfare and Institutions Code proposed by this bill, AB 408, and AB 1151. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 16501 of the Welfare and Institutions Code, and (3) this

bill is enacted after AB 408 and AB 1151, in which case Sections 8, 8.5, and 8.7 of this bill shall not become 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 813

An act to amend Sections 349, 366, 366.1, 366.21, 366.22, 366.26, 366.3, 391, 10609.4, 16206, 16500.1, and 16501.1 of, and to add Section 362.05 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 349 of the Welfare and Institutions Code is amended to read:

349. A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Sections 290.1 and 290.2, is entitled to be present at the hearing. The minor and any person who is entitled to that notice has the right to be represented at the hearing by counsel of his or her own choice. If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing.

SEC. 2. Section 362.05 is added to the Welfare and Institutions Code, to read:

362.05. Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state or local regulation or policy may prevent or create barriers to participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular,

enrichment, and social activities. Caregivers shall use a prudent parent standard in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities. The caretaker shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

SEC. 3. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older who is placed in a group home, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(D) (i) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(I) The nature of the relationship between the child and his or her siblings.

(II) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(III) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(IV) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(V) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(VI) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

(ii) The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(E) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child may not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

SEC. 4. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) (1) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(2) The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(g) Whether a child who is 10 years of age or older who is placed in a group home has relationships with individuals other than the child's siblings that are important to the child, consistent with the child's best interests, and actions taken to maintain those relationships. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, consistent with the child's best interest, and may ask any child who is younger than 10 years of age to provide that information, as appropriate.

SEC. 5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the

hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between the child and individuals who are important to the child, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption

agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been

provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been

provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the

date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For

purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed

guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 5.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between the child and individuals who are important to the child, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report

containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it

finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that

are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster

care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 6. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance

of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care. If the court orders that a child who is 10 years of age or older remain in long-term foster care with a nonrelative, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have

been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, ''relative'' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of

the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older to identify any individuals who are important to the child, to identify potential adoptive parents. The public agency may ask any child who is younger than 10 years of age to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of

a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home shall be asked to identify any individuals who are important to the child to identify potential guardians. The agency may ask any child who is younger than 10 years of age to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. A child under 10 years of age may not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which

shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and

supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, ''preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 8. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older who is not placed with a relative, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed with a relative to identify individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(3) The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships between the child and individuals who are important to the child and efforts to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment efforts and listing on an adoption exchange.

(4) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a

safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(6) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(7) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(8) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(9) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(10) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) If the child has not been placed with a prospective adoptive parent or guardian, identification of individuals who are important to the child and actions necessary to maintain the child's relationship with those individuals. The agency shall ask every child who is 10 years of age or older to identify any individuals who are important to him or her, consistent with the child's best interest, and may ask any child who is younger than 10 years of age to provide that information as appropriate. The agency shall make efforts to identify other individuals who are important to the child.

(4) Whether the child has been placed with a prospective adoptive parent or parents.

(5) Whether an adoptive placement agreement has been signed and filed.

(6) If the child has not been placed with a prospective adoptive parent or parents, the efforts made to identify an appropriate prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment efforts and listing on an adoption exchange.

(7) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(8) The progress of the search for an adoptive placement if one has not been identified.

(9) Any impediments to the adoption or the adoptive placement.

(10) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(11) The anticipated date by which an adoptive placement agreement will be signed.

(12) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest of the child, whether the child should be placed in another planned permanent living arrangement. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine

whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 9. Section 391 of the Welfare and Institutions Code is amended to read:

391. At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall do both of the following:

(a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.

(b) Submit a report verifying that the following information, documents, and services have been provided to the child:

(1) Written information concerning the child's dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(2) The following documents, where applicable: social security card, certified birth certificate, identification card, as described in Section 13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence.

(3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.

(4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(5) Assistance in maintaining relationships with individuals who are important to the child, based on the child's best interests.

(c) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

(d) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

SEC. 10. Section 10609.4 of the Welfare and Institutions Code is amended to read:

10609.4. (a) On or before July 1, 2000, the State Department of Social Services, in consultation with county and state representatives, foster youth, and advocates, shall do both of the following:

(1) Develop statewide standards for the implementation and administration of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

(2) Define the outcomes for the Independent Living Program and the characteristics of foster youth enrolled in the program for data collection purposes.

(b) Each county department of social services shall include in its annual Independent Living Program report both of the following:

(1) An accounting of federal and state funds allocated for implementation of the program. Expenditures shall be related to the specific purposes of the program. Program purposes may include, but are not limited to, all of the following:

(A) Enabling participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, and providing job readiness training and placement services, or building work experience and marketable skills, or both.

(B) Providing training in daily living skills, budgeting, locating and maintaining housing, and career planning.

(C) Providing for individual and group counseling.

(D) Integrating and coordinating services otherwise available to participants.

(E) Providing each participant with a written transitional independent living plan that will be based on an assessment of his or her needs, that includes information provided by persons who have been identified by the participant as important to the participant, and that will be incorporated into his or her case plan.

(F) Providing participants with other services and assistance designed to improve independent living.

(G) Convening persons who have been identified by the participant as important to him or her for the purpose of providing information to be included in his or her written transitional independent living plan.

(2) A detail of the characteristics of foster youth enrolled in their independent living programs and the outcomes achieved based on the information developed by the department pursuant to subdivision (a).

(c) In consultation with the department, a county may use different methods and strategies to achieve the standards and outcomes of the Independent Living Program developed pursuant to subdivision (a).

(d) In consultation with the County Welfare Directors Association, the California Youth Connection, and other stakeholders, the department shall develop and adopt emergency regulations in accordance with Section 11346.1 of the Government Code that counties shall be required to meet when administering the Independent Living Program and that are achievable within existing program resources. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days.

SEC. 11. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as a mandated reporter pursuant to the Child Abuse and Neglect Reporting Act, Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code. The program shall provide the services required in this section to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. However, county child protective services social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this act.

(b) The training program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system that will address critical issues affecting the well-being of children, and shall develop curriculum materials and training resources for use in meeting staff development needs of mandated child

abuse reporters and child welfare personnel in public and private agency settings.

(c) The training provided pursuant to this section shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Use of community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children, including indicators and dynamics of teen dating violence.

(11) Posttraumatic stress disorder and the causes, symptoms, and treatment of posttraumatic stress disorder in children.

(12) The importance of maintaining relationships with individuals who are important to a child in out-of-home placement, including methods to identify those individuals, consistent with the child's best interests, including, but not limited to, asking the child about individuals who are important, and ways to maintain and support those relationships.

(d) The training provided pursuant to this section may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(e) Prior to January 1, 1989, the department shall provide the Legislative Analyst and the Select Committee on Children and Youth with a listing of the counties participating in the program, including the number of persons trained in each county.

(f) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent years. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(g) The training program shall provide practice-relevant training to county child protective services social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

SEC. 12. Section 16500.1 of the Welfare and Institutions Code is amended to read:

16500.1. (a) It is the intent of the Legislature to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected, as described in Section 300, to reduce the necessity for removing these children from their home, to encourage speedy reunification of families when it can be safely accomplished, to locate permanent homes and families for children who cannot return to their biological families, to reduce the number of placements experienced by these children, to ensure that children leaving the foster care system have support within their communities, to improve the quality and homelike nature of out-of-home care, and to foster the educational progress of children in out-of-home care.

(b) In order to achieve the goals specified in subdivision (a), the state shall encourage the development of approaches to child protection that do all of the following:

(1) Allow children to remain in their own schools, in close proximity to their families.

(2) Increase the number and quality of foster families available to serve these children.

(3) Use a team approach to foster care that permits the biological and foster family to be part of that team.

(4) Use team decisionmaking in case planning.

(5) Provide support to foster children and foster families.

(6) Ensure that licensing requirements do not create barriers to recruitment of qualified, high quality foster homes.

(7) Provide training for foster parents and professional staff on working effectively with families and communities.

(8) Encourage foster parents to serve as mentors and role models for biological parents.

(9) Use community resources, including community-based agencies and volunteer organizations, to assist in developing placements for children and to provide support for children and their families.

(10) Ensure an appropriate array of placement resources for children in need of out-of-home care.

(11) Ensure that no child leaves foster care without a life-long connection to a committed adult.

(c) In carrying out the requirements of subdivision (b), the department shall do all of the following:

(1) Consider the existing array of program models provided in statute and in practice, including, but not limited to, wraparound services, as defined in Section 18251, children's systems of care, as provided for in Section 5852, the Oregon Family Unity or Santa Clara County Family Conference models, which include family conferences at key points in the casework process, such as when out-of-home placement or return home are considered, and the Annie E. Casey Foundation Family to Family initiative, which uses team decisionmaking in case planning, community-based placement practices requiring that children be placed in foster care in the communities where they resided prior to placement, and involve foster families as team members in family reunification efforts.

(2) Ensure that emergency response services, family maintenance services, family reunification services, and permanent placement services are coordinated with the implementation of the models described in paragraph (1).

(3) Ensure consistency between child welfare services program regulations and the program models described in paragraph (1).

(d) The department, in conjunction with stakeholders, including, but not limited to, county child welfare services agencies, foster parent and group home associations, the California Youth Connection, and other child advocacy groups, shall review the existing child welfare services program regulations to ensure that these regulations are consistent with the legislative intent specified in subdivision (a). This review shall also determine how to incorporate the best practice guidelines for assessment of children and families receiving child welfare and foster care services, as required by Section 16501.2.

(e) The department shall report to the Legislature on the results of the actions taken under this section on or before January 1, 2002.

SEC. 13. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case

management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case

plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.1. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless,

pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers.

The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and

sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.2. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of

Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan

shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child

who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.3. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority,

placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5.

At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the

case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include

documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall

be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.4. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the provisions of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling

visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor

for that case determines that the modifications further the goals of the plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the

child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.5. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the provisions of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities,

visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and

the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process

based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.6. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) As used in subdivisions (a), (b), and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under

subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall

be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to

accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the

plan. When out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to

provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(*l*) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 13.7. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority,

placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the provisions of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (a), (b), and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the

home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made,

the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of

guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(*l*) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 14. Section 5.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 579. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 579, in which case Section 5 of this bill shall not become operative.

SEC. 15. Section 13.1 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and SB 591. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and AB 1151 and AB 490 are not enacted or do not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 591, in which case Sections 13, 13.2, 13.3, 13.4, 13.5, 13.6, and 13.7 of this bill shall not become operative.

SEC. 16. Section 13.2 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 1151. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and SB 591 and AB 490 are not enacted or do not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1151, in which case Sections 13, 13.1, 13.3, 13.4, 13.5, 13.6, and 13.7 of this bill shall not become operative.

SEC. 17. Section 13.3 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both

this bill and AB 490. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and AB 1151 and SB 591 are not enacted or do not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 490, in which case Sections 13, 13.1, 13.2, 13.4, 13.5, 13.6, and 13.7 of this bill shall not become operative.

SEC. 18. Section 13.4 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 490, and SB 591. It shall only become operative if (1) these three bills are enacted and become effective on or before January 1, 2004, and AB 1151 is not enacted or does not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 490 and SB 591, in which case Sections 13, 13.1, 13.2, 13.3, 13.5, 13.6, and 13.7 of this bill shall not become operative.

SEC. 19. Section 13.5 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 490, and AB 1151. It shall only become operative if (1) these three bills are enacted and become effective on or before January 1, 2004, and SB 591 is not enacted or does not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 490 and AB 1151, in which case Sections 13, 13.1, 13.2, 13.3, 13.4, 13.6, and 13.7 of this bill shall not become operative.

SEC. 20. Section 13.6 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, SB 591, and AB 1151. It shall only become operative if (1) these three bills are enacted and become effective on or before January 1, 2004, and AB 490 is not enacted or does not amend that section, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 591 and AB 1151, in which case Sections 13, 13.1, 13.2, 13.3, 13.4, 13.5, and 13.7 of this bill shall not become operative.

SEC. 21. Section 13.7 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill, SB 591, and AB 490, and AB 1151. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 591, AB 490, and AB 1151, in which case Sections 13, 13.1, 13.2, 13.3, 13.4, 13.5, and 13.6 of this bill shall not become operative. 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 814

An act to amend Sections 17021.7, 17951, 18013.4, 18045.5, 18214, 18300, 18862.39, 18862.47, 18865, 19971, 50517.5, and 50786 of the Health and Safety Code, relating to mobilehomes and manufactured homes.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 17021.7 of the Health and Safety Code is amended to read:

17021.7. Notwithstanding subdivision (b) of Section 18214, subdivision (b) of Section 18862.39, and subdivision (b) of Section 18862.47, mobilehomes and recreational vehicles used to house agricultural employees shall be maintained in conformity with the applicable requirements of the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)).

SEC. 2. Section 17951 of the Health and Safety Code is amended to read:

17951. (a) The governing body of any county or city, including a charter city, may prescribe fees for permits, certificates, or other forms or documents required or authorized by this part or rules and regulations adopted pursuant to this part.

(b) The governing body of any county or city, including a charter city, or fire protection district, may prescribe fees to defray the costs of enforcement required by this part to be carried out by local enforcement agencies.

(c) The amount of the fees prescribed pursuant to subdivisions (a) and (b) shall not exceed the amount reasonably required to administer or process these permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes. The fees shall be imposed pursuant to Section 66016 of the Government Code.

(d) (1) The provisions of this part are not intended to prevent the use of any manufactured home, mobilehome, multiunit manufactured home, material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the California Building Standards Code or this part, provided that this alternate has been approved by the building department.

(2) The building department of any city or county may approve an alternate material, appliance, installation, device, arrangement, method, or work on a case-by-case basis if it finds that the proposed design is satisfactory and that each such material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the California Building Standards Code or this part in performance, safety, and for the protection of life and health.

(3) The building department of any city or county shall require evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to, or that the proposed alternate is at least equivalent to, the requirements of this part, building standards published in the California Building Standards Code, or the other rules and regulations promulgated pursuant to this part and in order to substantiate claims for alternates, the building department of any city or county may require tests as proof of compliance to be made at the expense of the owner or the owner's agent by an approved testing agency selected by the owner or the owner's agent.

SEC. 3. Section 18013.4 of the Health and Safety Code is amended to read:

18013.4. ''Truck camper'' means a slide-in camper as defined in Section 18012.4.

SEC. 4. Section 18045.5 of the Health and Safety Code is amended to read:

18045.5. (a) The department shall not issue a manufacturer, distributor, or dealer license to any applicant therefor who does not have an established place of business.

(b) In the case of a dealer or distributor, the established place of business shall have an office located within the State of California. In the case of a manufacturer, the established place of business shall have a manufacturing area defined by department regulations situated on the same property. When a room or rooms in a hotel, roominghouse, apartment house building, or a part of any single-unit or multiple-unit dwelling house is used as an office or offices of an established place of business, the room or rooms shall be devoted exclusively to, and occupied for, the office or offices of the licensee, shall be located on the ground floor, and shall provide a direct entrance into the room or rooms from the exterior of the building.

(c) The established place of business shall be open for inspection of the premises, pertinent records, and manufactured homes, mobilehomes, or commercial coaches by any department representative during business hours. If records are kept at a location other than the principal dealer business location, that other location shall be open for inspection of the premises and pertinent records during normal business hours.

SEC. 5. Section 18214 of the Health and Safety Code, as amended by Section 6 of Chapter 434 of the Statutes of 2001, is amended to read:

18214. (a) ''Mobilehome park'' is any area or tract of land where two or more lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for human habitation. The rental paid for a manufactured home, a mobilehome, or a recreational vehicle shall be deemed to include rental for the lot it occupies. This subdivision shall not be construed to authorize the rental of a mobilehome park space for the accommodation of a recreational vehicle in violation of Section 798.22 of the Civil Code.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented or leased, held out for rent or lease, or provided as a term or condition of employment, to accommodate 12 or fewer manufactured homes, mobilehomes, or recreational vehicles used for the purpose of housing agricultural employees shall not be deemed a mobilehome park for the purposes of the requirement to obtain an initial or annual permit to operate or pay any related fees required by this part.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Sec. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate which is at least the equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) in performance, safety, and for the protection of life and health.

SEC. 6. Section 18300 of the Health and Safety Code, as amended by Section 4 of Chapter 413 of the Statutes of 1993, is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of this part and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce this part and the regulations adopted pursuant to this part in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of this part. The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles and to accessory buildings or structures located in both of the following areas:

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of this part.

(2) Outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, mobilehome parks, and special occupancy parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks or special occupancy parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home, mobilehome, or recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home, mobilehome, or recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes, mobilehomes, and recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, recreational vehicle park, or temporary recreational vehicle park, under circumstances which the provisions of this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(5) From authorizing the creation, movement, shifting, or alteration of mobilehome park lot lines as specified in Section 18610.5.

(6) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park or special occupancy park.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(3) A city, including a charter city, county, or city and county, shall not require the setback and separation requirements authorized by paragraph (6) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

SEC. 7. Section 18300 of the Health and Safety Code, as amended by Section 17 of Chapter 434 of the Statutes of 2001, is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part or Part 2.3 (commencing with Section 18860), the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles, and to accessory buildings or structures located in both of the following areas:

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.3 (commencing with Section 18860).

(2) Outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(5) From authorizing the creation, movement, shifting, or alteration of mobilehome park lot lines as specified in Section 18610.5.

(6) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(3) A city, including a charter city, county, or city and county, shall not require the setback and separation requirements authorized by paragraph (6) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

SEC. 8. Section 18862.39 of the Health and Safety Code is amended to read:

18862.39. (a) ''Recreational vehicle park'' is any area or tract of land, or a separate designated section within a mobilehome park where two or more lots are rented, leased, or held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate owners or users of recreational vehicles, camping cabins, or tents.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented, leased, or held out for rent or lease to accommodate owners or users of 12 or fewer recreational vehicles for the purpose of housing agricultural employees shall not be deemed a recreational vehicle park for the purposes of the requirement to obtain an initial or annual permit to operate or pay any fees related thereto required by this part.

SEC. 9. Section 18862.47 of the Health and Safety Code is amended to read:

18862.47. (a) ''Temporary recreational vehicle park'' is any area or tract of land where two or more lots are rented, leased, or held out for rent or lease to owners or users of recreational vehicles and that is established for one operation not to exceed 11 consecutive days, and is then removed.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more lots are rented, leased, or held out for rent or lease to accommodate owners or users of 12 or fewer recreational vehicles for the purpose of housing agricultural employees shall not be deemed a temporary recreational vehicle park for the purposes of the requirement to obtain an initial or annual permit to operate or pay any fees related thereto required by this part.

SEC. 10. Section 18865 of the Health and Safety Code is amended to read:

18865. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of special occupancy parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part and Part 2.1 in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county shall, within its jurisdiction, enforce this part and the regulations adopted pursuant to this part, as they relate to recreational vehicles and to accessory buildings or structures located in both of the following areas: (1) inside of parks where the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.1 (commencing with Section 18200), and (2) outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) Establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for special occupancy parks within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street

frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for special occupancy parks.

(2) Regulating the construction and use of equipment and facilities located outside of a recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) Requiring a permit to use a recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use or Part 2.1 (commencing with Section 18200).

(4) Authorizing the creation, movement, shifting, or alteration of park lot lines as specified in Section 18872.1.

(h) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of similar recreational facilities, if any, in the city, county, or city and county.

SEC. 11. Section 19971 of the Health and Safety Code is amended to read:

19971. ''Factory-built housing'' means a residential building, dwelling unit, or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, including units designed for use as part of an institution for resident or patient care, that is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled onsite in accordance with building standards published in the California Building Standards Code and other regulations adopted by the commission pursuant to Section 19990. Factory-built housing does not include a mobilehome, as defined in Section 18008, a recreational vehicle, as defined in Section 18010.5, or a commercial modular, as defined in Section 18012.5.

SEC. 12. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the

availability of funds therefor, grants or loans, or both, shall be made to local public entities, nonprofit corporations, and limited partnerships, for the construction or rehabilitation of housing for agricultural employees and their families or for the acquisition of manufactured housing as part of a program to address and remedy the impacts of current and potential displacement of farmworker families from existing labor camps, mobilehome parks, or other housing. Under this program, grants or loans, or both, may also be made for the cost of acquiring the land and any building thereon in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grants or loans, or both, to the local public entities, nonprofit corporations, or limited partnerships or may, at the request of the local public entity, nonprofit corporation, or limited partnership that sponsors and supervises the rehabilitation or construction program, disburse grant funds to agricultural employees who are participants in a rehabilitation or construction program sponsored and supervised by the local public entity, nonprofit corporation, or limited partnership. No part of a grant or loan made pursuant to this section may be used for project organization or planning.

(2) Notwithstanding any other provision of this chapter, upon the request of a grantee, if funds are used in conjunction with low-income housing tax credits, the program also may loan funds to a grantee at no more than 3 percent simple interest. Principal and accumulated interest is due and payable upon completion of the term of the loan. For any loan made pursuant to this subdivision, the performance requirements of the lien shall remain in effect for a period of no less than the original term of the loan.

(3) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(b) (1) The Joe Serna, Jr. Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for making grants or loans, or both, pursuant to this section and Section 50517.10, for purposes of Chapter 8.5 (commencing with Section 50710), and for costs incurred by the department in administering these programs.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys that the department receives in repayment or return of grants or loans from the fund, including any interest therefrom.

(C) Any other moneys that may be made available to the department for the purposes of this chapter from any other source or sources.

(D) All moneys appropriated to the department for the purposes of Chapter 8.5 (commencing with Section 50710) and any moneys received by the department from the occupants of housing or shelter provided pursuant to Chapter 8.5 (commencing with Section 50710). These moneys shall be separately accounted for from the other moneys deposited in the fund.

(c) Grants and loans made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds provided pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or rehabilitated with the assistance of funds provided pursuant to this section.

(4) (A) Require as a condition precedent to a grant or loan, or both, of funds that the applicant have site control that is satisfactory to the department; that the grantee be record owner in fee of the assisted real property or provide other security including a lien on the manufactured home that is satisfactory to the department to ensure compliance with the construction, financial, and program obligations; and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors in interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall include provisions for a lien on the assisted real property or manufactured home in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted or loaned pursuant to this section constitute less than 25 percent of the total development cost or value,

whichever is applicable, of a project assisted under this section, the department may adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project that is less than the percentage of total development costs that funds granted or loaned pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property that is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. For manufactured housing, the liens shall be recorded by the department in the same manner as other manufactured housing liens are recorded. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction. The lien period for manufactured housing liens for manufactured homes shall not exceed 10 years.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, or the department, as appropriate, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(E) Prior to funds granted pursuant to this section being used to finance the acquisition of a manufactured home, the grantee shall ensure that the home either is already installed in a location where it will be occupied by the eligible household or that a location has been leased or otherwise made available for the manufactured home to be occupied by the eligible household.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant and loan funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit that is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Joe Serna, Jr. Farmworker Housing Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants or loans, or both, made to each grantee in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant or loan, or both, under this section,

and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its application to other groups in rural areas identified by the department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) ''Agricultural employee'' has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) ''Grantee'' means the local public entity, nonprofit corporation, or limited partnership that is awarded the grant or loan, or both, under this section, and, at the request thereof, may include an agricultural employee receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and may include an agricultural employee receiving direct payment of a grant for construction under this section who will occupy the assisted housing and who is a participant in a rehabilitation or construction program sponsored and supervised by a local public entity, nonprofit corporation, or limited partnership.

(3) ''Housing'' may include, but is not necessarily limited to, conventionally constructed units and manufactured housing installed pursuant to either Section 18551 or 18613.

(4) ''Limited partnership'' means a limited partnership where all of the general partners are nonprofit mutual or public benefit corporations.

(h) The department may provide the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 13. Section 50786 of the Health and Safety Code is amended to read:

50786. (a) The department shall adopt regulations for the administration and implementation of this chapter.

(b) The department shall obtain the best available security for loans made pursuant to this chapter. The security may include a note, deed of trust, assignment of lease, or other form of security on real or personal property which the department determines is adequate to protect the interests of the state. To the extent applicable, these documents and any regulatory provisions shall be recorded or referenced in a recorded document in the office of the county recorder of the county in which the mobilehome park is located.

(c) The degree of continuing regulatory control with respect to park operations and resident loans exercised by the department in making loans pursuant to this chapter shall be commensurate with the level of financial assistance provided and in all cases shall be adequate to protect the state's security interest and ensure the accomplishment of the purposes of the program authorized by this chapter. The regulatory requirements shall be set forth in a regulatory agreement, deed of trust, or other lien, and any violation of these requirements shall be considered a violation of a security document. Where loans are made to a qualifying nonprofit housing sponsor or local public entity, a regulatory agreement shall be recorded against the mobilehome park. This regulatory agreement shall contain provisions limiting occupancy, rents, and park operation for the original loan term. The department may release individual spaces from the regulatory agreement only if they are purchased by residents who occupy them.

(d) Before providing financing pursuant to this chapter, the department shall require provision of, and approve, at least all of the following:

(1) Verification at the time of application and prior to funding that at least two-thirds of the households residing in the mobilehome park support the plans for acquisition and conversion of the park.

(2) Verification that either no park residents shall be involuntarily displaced as a result of the park conversion or the impacts of the displacement shall be mitigated as required under state and local law. For purposes of this requirement, compliance with Section 66427.5 of the Government Code shall be conclusively presumed to have mitigated economic displacement.

(3) Verification that the conversion is consistent with local zoning and land use requirements, other applicable state and local laws, and regulations and ordinances.

(4) Projected costs and sources of funds for all conversion activities.

(5) Projected operating budget for the park during and after the conversion.

(6) A management plan for the conversion and operation of the park.

(7) If necessary, a relocation plan for residents not participating that is in compliance with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code.

(e) The department shall, to the greatest extent feasible, do all of the following:

(1) Require participation by cities and counties in loan applications submitted pursuant to this chapter.

(2) Contract with private lenders or local public entities to provide program administration and to service loans made pursuant to this chapter.

(3) Give priority to applications for resident-owned parks.

SEC. 14. The Department of Housing and Community Development may implement the changes made by this act to Section 50517.5 of the Health and Safety Code for 24 months using guidelines, during which time those guidelines shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

CHAPTER 815

An act to amend Sections 18300, 18610.5, 18865, and 18872.1 of, and to add Section 18407 to, the Health and Safety Code, relating to mobilehomes.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 18300 of the Health and Safety Code, as amended by Section 17 of Chapter 434 of the Statutes of 2001, is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or

city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part or Part 2.3 (commencing with Section 18860), the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles, and to accessory buildings or structures located in both of the following areas:

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.3 (commencing with Section 18860).

(2) Outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle

parking or from prescribing the prohibition of certain uses for mobilehome parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(5) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(3) A city, including a charter city, county, or city and county, shall not require the setback and separation requirements authorized by paragraph (5) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

(i) The department may, at the department's sole option, enforce plan review activities associated with this part and the rules and regulations adopted thereunder through department-approved plan checking agencies. The department shall adopt regulations for approving and monitoring plan checking agencies, including, but not limited to, all of the following criteria:

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

(3) A prohibition against collusive or fraudulent actions related to the performance of activities required by this part.

(4) Establishment of a schedule of fees to offset the department's cost of administering the approval and monitoring activities.

(5) Establishment of procedures for reimbursement to plan checking agencies for plan review services rendered.

(6) Establishment of a schedule of citations and administrative fines issued by the department upon finding a violation of this subdivision on the part of a plan checking agency.

(7) Any other conditions of operation the department may reasonably require.

(j) (1) The department may, by regulation, provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction of mobilehome parks and to perform reviews of plans and specifications for the construction of additional buildings or lots, the alteration of buildings, lots, or other installations, in an existing mobilehome park, in areas in which the department is the enforcement agency. The regulations shall specify that all approved plan checking agencies shall employ at least one architect or engineer, licensed by the state, and that the architect or engineer shall be responsible for all plan review activity specified in this part. Plans approved by department-approved agencies shall be deemed the equivalent of department approval of those plans.

(2) No agency approved to serve as a plan checking agency pursuant to this subdivision shall have a financial interest in any mobilehome park, with any owner, developer, or contractor of a mobilehome park, or in any entity used by the department for the purpose of performing oversight of the performance of plan checking agencies.

SEC. 1.5. Section 18300 of the Health and Safety Code, as amended by Section 17 of Chapter 434 of the Statutes of 2001, is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part or Part 2.3 (commencing with Section 18860), the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.3 (commencing with Section 18860). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles, and to accessory buildings or structures located in both of the following areas:

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.3 (commencing with Section 18860).

(2) Outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(5) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home,

mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(3) A city, including a charter city, county, or city and county, shall not require the setback and separation requirements authorized by paragraph (5) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

SEC. 2. Section 18407 is added to the Health and Safety Code, to read:

18407. The Legislature finds and declares that, because the health and safety of mobilehome park occupants is a matter of public interest and concern, it is necessary, pursuant to a complaint about a violation of this part to the enforcement agency, that the enforcement agency should notify the complainant in advance of the date when the agency's inspector or representative is scheduled to investigate the complaint, to give the complainant an opportunity to be present to speak to the inspector or representative, and that following an inspection of the complaint, the agency contact the complainant to advise him or her of the inspector's or representative's findings concerning the complaint.

SEC. 3. Section 18610.5 of the Health and Safety Code is amended to read:

18610.5. (a) Park lot lines shall not be created, moved, shifted, or altered without a permit issued to the park owner or operator by the enforcement agency and the written authorization of the registered owner or owners of the mobilehome or manufactured home, if any, located on the lot or lots on which the lot line will be created, moved, shifted, or altered.

(b) No park lot line shall be created, moved, shifted, or altered, if the action will place the mobilehome owner, as defined by Section 18400.4, of a mobilehome or manufactured home located on a lot in violation of any separation or space requirements under this part or under any administrative regulation.

(c) The park owner or operator shall submit a written application for the lot line alteration permit to the enforcement agency. The application

shall include a list of the names and addresses of the registered owners of mobilehomes or manufactured homes located on the lot or lots that would be altered by the proposed lot line change and the written authorization of the registered owners. The enforcement agency may require, as part of the application for the permit, that a mobilehome park owner or operator submit to the enforcement agency documents needed to demonstrate compliance with this section, including, but not limited to, a detailed plot plan showing the dimensions of each lot altered by the creation, movement, shifting, or alteration of the lot lines. If submission of a plot plan is required, the mobilehome park owner or operator shall provide a copy of the plot plan to the registered owners of mobilehomes or manufactured homes located on each lot that would be altered by the proposed lot line change and provide the enforcement agency, as part of the application, with proof of delivery by first-class postage prepaid of the copy of the plot plan to the affected registered owners.

(d) The department may adopt a fee, by regulation, payable by the applicant, for the permit authorized by this section.

(e) If the department is the enforcement agency and the application proposes to reduce or increase the total number of lots available for occupation, the applicant shall submit a copy of that application and any information required by subdivision (c) to the local planning agency of the jurisdiction where the park is located.

SEC. 4. Section 18865 of the Health and Safety Code is amended to read:

18865. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or

city and county, together with all records of special occupancy parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part and Part 2.1 in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to recreational vehicles and to accessory buildings or structures located in both of the following areas: (1) inside of parks where the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.1 (commencing with Section 18200), and (2) outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) Establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for special occupancy parks within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for special occupancy parks.

(2) Regulating the construction and use of equipment and facilities located outside of a recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) Requiring a permit to use a recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use or Part 2.1 (commencing with Section 18200).

(h) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of similar recreational facilities, if any, in the city, county, or city and county.

(i) The department may, at the department's sole option, enforce plan review activities associated with this part and the rules and regulations adopted thereunder through department-approved plan checking agencies. The department shall adopt regulations for approving and monitoring plan checking agencies, including, but not limited to, all of the following criteria:

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

(3) A prohibition against collusive or fraudulent actions related to the performance of activities required by this part.

(4) Establishment of a schedule of fees to offset the department's cost of administering the approval and monitoring activities.

(5) Establishment of procedures for reimbursement to plan checking agencies for plan review services rendered.

(6) Establishment of a schedule of citations and administrative fines issued by the department upon finding a violation of this subdivision on the part of a plan checking agency.

(7) Any other conditions of operation the department may reasonably require.

(j) (1) The department may, by regulation, provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction of special occupancy parks and to perform reviews of plans and specifications for the construction of additional buildings or lots, the alteration of buildings, lots, or other installations, in an existing special occupancy park, in areas in which the department is the enforcement agency. The regulations shall specify that all approved plan checking agencies shall employ at least one architect or engineer, licensed by the state, and that the architect or engineer shall be responsible for all plan review activity specified in this part. Plans

approved by department-approved agencies shall be deemed the equivalent of department approval of those plans.

(2) No agency approved to serve as a plan checking agency pursuant to this subdivision shall have a financial interest in any special occupancy park, with any owner, developer, or contractor of a special occupancy park, or in any entity used by the department for the purpose of performing oversight of the performance of plan checking agencies.

SEC. 4.5. Section 18865 of the Health and Safety Code is amended to read:

18865. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations that set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations shall not set forth requirements for local agencies different than those that the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of special occupancy parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce both this part and Part 2.1 (commencing with Section 18200) and the regulations adopted pursuant to this part and Part 2.1 in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency may appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of both this part and Part 2.1 (commencing with Section 18200). The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county shall, within its jurisdiction, enforce this part and the regulations adopted pursuant to this part, as they relate to recreational vehicles and to accessory buildings or structures located in both of the following areas: (1) inside of parks where the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.1 (commencing with Section 18200), and (2) outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) Establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for special occupancy parks within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for special occupancy parks.

(2) Regulating the construction and use of equipment and facilities located outside of a recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) Requiring a permit to use a recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use or Part 2.1 (commencing with Section 18200).

(h) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of similar recreational facilities, if any, in the city, county, or city and county.

SEC. 5. Section 18872.1 of the Health and Safety Code is amended to read:

18872.1. (a) Park lot lines shall not be created, moved, shifted, or altered without a permit issued to the park owner or operator by the enforcement agency and the written authorization of the occupant or occupants, resident, or tenant, if any, of the lot or lots on which the lot line will be created, moved, shifted, or altered.

(b) No park lot line shall be created, moved, shifted, or altered, if the action will place an occupant of a lot in violation of any separation or space requirements under this part or under any administrative regulation.

(c) The park owner or operator shall submit a written application for the lot line alteration permit to the enforcement agency. The application shall include a list of the names and addresses of the occupants, residents, or tenants, if any, of the lot or lots that would be altered by the proposed lot line change and the written authorization of the occupants, residents, or tenants. The enforcement agency may require, as part of the application for the permit, that the park owner or operator submit to the enforcement agency documents needed to demonstrate compliance with this section, including, but not limited to, a detailed plot plan showing the dimensions of each lot altered by the creation, movement, shifting, or alteration of lot lines. If submission of a plot plan is required, the park owner or operator shall provide a copy of the plot plan to the occupants, residents, or tenants of each lot that would be altered by the proposed lot line change and provide the enforcement agency, as part of the application, with proof of delivery by first-class postage prepaid of the copy of the plot plan to the affected occupants, residents, or tenants.

(d) The department may adopt a fee, by regulation, payable by the applicant, for the permit authorized by this section.

(e) If the department is the enforcement agency and the application proposes to reduce or increase the total number of lots available for occupation, the applicant shall submit a copy of that application and any information required by subdivision (c) to the local planning agency of the jurisdiction where the park is located.

SEC. 6. (a) Except as provided in subdivision (b) or (c), Sections 1, 1.5, and 3 to 5, inclusive, of this act shall become operative July 1, 2005.

(b) Section 1.5 of this bill incorporates amendments to Section 18300 of the Health and Safety Code proposed by both this bill and SB 306. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 18300 of the Health and Safety Code, as amended by Section 17 of Chapter 434 of the Statutes of 2001, and (3) this bill is enacted after SB 306, in which case Section 18300 of the Health and Safety Code, as amended by Section 7 of SB 306, shall remain operative only until July

1, 2005, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

(c) Section 4.5 of this bill incorporates amendments to Section 18865 of the Health and Safety Code proposed by both this bill and SB 306. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 18865 of the Health and Safety Code, and (3) this bill is enacted after SB 306, in which case Section 18865 of the Health and Safety Code, as amended by SB 306, shall remain operative only until July 1, 2005, at which time Section 4.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 7. 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 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 816

An act to add Section 4551.9 to the Public Resources Code, relating to forest practices.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 4551.9 is added to the Public Resources Code, to read:

4551.9. (a) On or before January 1, 2005, the board shall adopt regulations to require that a timber harvesting plan include a map or maps, depicting the location and boundaries of past, present, and reasonably foreseeable probable future projects, as defined in Section 21065 and Section 895.1 of Title 14 of the California Code of Regulations, on land owned or controlled by the applicant in the planning watershed. The board may not require an applicant to furnish

maps of projects completed more than 10 years prior to the submission of the timber harvesting plan. Maps shall include silvicultural prescription. The scale and format of maps provided pursuant to this subdivision shall be determined by the board. This subdivision may not be construed to require disclosure of proprietary information to the public.

(b) The board shall consider the impact of the regulations on smaller landowners, and avoid excessive burdens or costs on those landowners.

CHAPTER 817

An act to add Section 44238 to the Education Code, relating to teachers.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) California's educational system continues to fail to meet the needs of its diverse pupil population.

(b) There is no system of accountability that ensures that teacher training in cultural differences and customs is available or effective.

SEC. 2. Section 44238 is added to the Education Code, to read:

44238. (a) The Commission on Teacher Credentialing, in consultation with the State Department of Education, shall contract with an independent evaluator with proven expertise in design and research to conduct a study of the availability and effectiveness of cultural competency training for teachers and administrators.

(b) The study shall focus on 10 culturally diverse schools that reflect the diverse demography and geography of California. The schools shall be selected for the study based on appropriate research methods. The criteria for school selection shall include, but not be limited to, all of the following:

(1) The cultural demographics of the pupil population within the school including, but not limited to, linguistic demographics and the number of English learners.

(2) The Academic Performance Index scores for each school. The study shall include schools that were previously low-performing schools that have shown significant progress in their Academic Performance Index scores and include schools that were low-performing schools that

have not shown significant progress in their Academic Performance Index scores.

(3) The experience of teachers, including, but not limited to, the number of teachers with emergency credentials.

(c) The study shall entail all of the following:

(1) Evaluating cultural competency training programs by doing all of the following:

(A) Assessing the availability and effectiveness of cultural competency training in teacher credentialing programs and professional development programs in which the teachers and administrators of each school have participated, including, but not limited to, university teacher preparation programs, university and district intern programs, distance learning schools, programs implemented pursuant to the California Beginning Teacher Support and Assessment System (Art. 4.5 (commencing with Sec. 44279.1), Ch. 2, Part 25), preinternship programs, and professional development institutes.

(i) The study shall consider pupil performance as one of many measures to determine the effectiveness of cultural competency training programs.

(ii) The study shall also consider the Academic Performance Index score of each school and their correlation to cultural competency training.

(B) Describing the cultural competency component of the training programs in which the teachers and administrators of each school have participated.

(C) Reporting on identifiable differences in cultural competency training in schools with a higher score on the Academic Performance Index compared to schools with a lower score on the Academic Performance Index.

(D) Determining whether cultural competency training programs at each school are correlated to higher pupil performance.

(E) Summarizing the participation rate of the teachers and administrators of each school in teacher credentialing programs, professional development programs, and other training programs.

(2) Evaluating teacher demographics at each school by doing both of the following:

(A) Summarizing the training, experience, cultural demographics, and other background characteristics of the teacher and administrative population at each school.

(B) Summarizing the patterns, criteria, and attributes that are priorities for staff hiring, compensation, and training at each school.

(3) Evaluating the cultural demographics of the pupil population at each school.

(4) Evaluating the commitment of each school to cultural competency by doing both of the following:

(A) Determining whether each school and its school district have a plan or timeline for achieving cultural competency in the classroom.

(B) Discussing the responsiveness of each school and its school district to their communities with regard to developing cultural competency training programs.

(5) Evaluating parent interactions at each school by doing all of the following:

(A) Describing the interaction between parents, parent organizations, teachers, administrators, and pupils at each school.

(B) Describing the procedures and policies that influence the interactions between each school and its administrators, teachers, parents, parent organizations, and pupils.

(C) Determining whether cultural competency training is effective in building connections between teachers, administrators, pupils, and their families.

(D) Reporting on identifiable differences in community and parental involvement in schools with higher scores on the Academic Performance Index compared to schools with lower scores on the Academic Performance Index.

(d) Upon the conclusion of the study, and on or before May 1, 2005, the independent evaluator shall submit to the appropriate policy committees of the Legislature a report that includes recommendations of all of the following, based on the results of the study:

(1) Ways to improve access to cultural competency training programs for teachers and administrators who attend teacher credentialing programs and professional development programs.

(2) Criteria for cultural competency training programs.

(3) Further studies that are necessary to provide information about types of cultural competency training programs that correlate to higher pupil performance.

(4) A model program related to the results of the study that may be implemented as a pilot program in other schools.

(e) For purposes of this section, the following phrases are defined as follows:

(1) ''Cultural competency'' includes, but is not limited to, adequate knowledge of diverse cultures, including languages, that may be encountered by a teacher in the classroom and the appropriate skills to work with pupils and their families.

(2) ''Cultural demographics'' includes, but is not limited to, familial country of origin and language, cultural traditions, and beliefs.

(3) ''Low-performing schools'' means schools that are ranked in the lowest two deciles on the Academic Performance Index.

(4) ''Pupil performance'' includes, but is not limited to, test scores, attendance rates, and graduation rates.

CHAPTER 818

An act to add Section 243.83 to the Penal Code, relating to crimes.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 243.83 is added to the Penal Code, to read:

243.83. (a) It is unlawful for any person attending a professional sporting event to do any of the following:

(1) Throw any object on or across the court or field of play with the intent to interfere with play or distract a player.

(2) Enter upon the court or field of play without permission from an authorized person any time after the authorized participants of play have entered the court or field to begin the sporting event and until the participants of play have completed the playing time of the sporting event.

(b) (1) The owner of the facility in which a professional sporting event is to be held shall provide a notice specifying the unlawful activity prohibited by this section and the punishment for engaging in that prohibited activity.

(2) The notice shall be prominently displayed throughout the facility or may be provided by some other manner, such as on a big screen or by a general public announcement. In addition, notice shall be posted at all controlled entry areas of the sporting facility.

(3) Failure to provide the notice shall not be a defense to a violation of this section.

(c) For the purposes of this section, the following terms have the following meanings:

(1) ''Player'' includes any authorized participant of play, including, but not limited to, team members, referees however designated, and support staff, whether or not any of those persons receive compensation.

(2) ''Professional sporting event'' means a scheduled sporting event involving a professional sports team or organization or a professional athlete for which an admission fee is charged to the public.

(d) A violation of subdivision (a) is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250). The fine shall not be

subject to penalty assessments as provided in Section 1464 or 1465.7 of this code or Section 76000 of the Government Code.

(e) This section shall apply to attendees at professional sporting events; this section shall not apply to players or to sports officials, as defined in Section 243.8.

(f) Nothing in this section shall be construed to limit or prevent prosecution under any applicable provision of law.

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

CHAPTER 819

An act to amend Section 3206 of, and to add Article 3.5 (commencing with Section 2145) to Chapter 2 of Division 2 of, the Elections Code, and to amend Section 12950 of, and to add Section 12950.5 to, the Vehicle Code, relating to voter registration.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Article 3.5 (commencing with Section 2145) is added to Chapter 2 of Division 2 of the Elections Code, to read:

Article 3.5. Student Voter Registration

2145. This article shall be known and may be cited as the Student Voter Registration Act of 2003.

2146. (a) The Secretary of State shall annually provide every high school, community college, and California State University and University of California campus with voter registration forms. The number of forms shall be consistent with the number of students enrolled at each school.

(b) The Secretary of State shall provide a written notice with each registration form describing eligibility requirements and informing each

student that he or she may return the completed form in person or by mail to the elections official of the county in which the student resides.

(c) It is the intent of the Legislature that every high school and college student receive a voter registration card with his or her diploma. It is also the intent of the Legislature that every school do all in its power to ensure that students are provided the opportunity and means to register to vote. This may include providing voter registration forms at the start of the school year, including voter registration forms with orientation materials, placing voter registration forms at central locations, and including voter registration forms with graduation materials.

SEC. 2. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct. If the voter fails to return an executed absent voter ballot for any statewide general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 2.5. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct for which he or she is eligible to vote. If the voter fails to return an executed absent voter ballot for any statewide general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 3. Section 12950 of the Vehicle Code is amended to read:

12950. (a) Every person licensed under this code shall write his or her usual signature with pen and ink in the space provided for that purpose on the license issued to him or her, immediately on receipt thereof, and the license is not valid until so signed, except that if the department issues a form of license which bears the facsimile signature of the applicant as shown upon the application, the license is valid even though not so signed.

(b) For purposes of subdivision (a), signature includes a digitized signature.

SEC. 4. Section 12950.5 is added to the Vehicle Code, to read:

12950.5. (a) The department shall require digitized signatures on each driver's license. A digitized signature is an electronic representation of a handwritten signature.

(b) The department shall provide to the Secretary of State the digitized signature of every person who registers to vote on the voter registration card provided by the department.

(c) The department shall provide the Secretary of State with change-of-address information for every voter who indicates that he or

she desires to have his or her address changed for voter registration purposes.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 3206 of the Elections Code proposed by both this bill and AB 188. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3206 of the Elections Code, and (3) this bill is enacted after AB 188, in which case Section 2 of this bill shall not become operative.

CHAPTER 820

An act to add Section 14666.8 to the Government Code, to amend Section 280 of, and to add Section 280.5 to, the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) Wireless telecommunications service is a critical part of California's infrastructure.

(b) The rapid deployment of wireless telecommunications facilities is critical to ensure network access and quality of service.

(c) It is in the public interest to minimize the aesthetic impact of wireless telecommunications towers and facilities necessary to support wireless networks.

(d) Use of property owned by the state, local government agencies, and other public entities for location of wireless telecommunications facilities will expedite deployment of wireless telecommunications service and minimize the aesthetic impact of wireless telecommunications towers and, facilities, or other wireless repeaters, amplifiers, regenerative repeaters, or regenerators that have the shape of natural or manmade structures or objects.

SEC. 2. Section 14666.8 is added to the Government Code, to read:

14666.8. (a) The director shall, within 120 days of the operative date of this section, compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of state-owned real property available for this purpose. The term ''state-owned real property,'' as used in this section, excludes

property owned or managed by the Department of Transportation and property subject to Section 7901 of the Public Utilities Code.

(b) The director shall provide, in a cost-effective manner, upon payment of any applicable fee, a requesting party a copy of the inventory.

(c) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed and state-owned real property to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for fair market value to be paid by the provider of wireless telecommunications service to the state to the extent permitted under existing state law.

(2) Designate a lease term that is acceptable to the director and the state agency that has control over the property. The duration of the initial lease term for any wireless facility may not exceed 10 years, and the lease may provide for a negotiated number of renewal terms, not to exceed five years for each term.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for colocation of their facilities on state-owned real property.

(d) Nothing in this section alters any existing rights of telegraph or telephone corporations pursuant to Section 7901 of the Public Utilities Code.

(e) Notwithstanding any other provision of law, any revenue collected from a lease entered into pursuant to this section to use property that was acquired with money from a fund other than the General Fund shall be deposited into the fund from which the money was obtained. Money received and deposited into a fund pursuant to this section shall be available upon appropriation by the Legislature notwithstanding any other provision of law.

SEC. 3. Section 280 of the Public Utilities Code is amended to read:

280. (a) The commission shall develop, implement, and administer a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of the Statutes of 1994.

(b) There is hereby created the California Teleconnect Fund Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of

the Statutes of 1994, and to carry out the program pursuant to the commission's direction, control, and approval.

(c) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on October 1, 2001, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenues collected prior to October 1, 2001, to the Controller for deposit in the California Teleconnect Fund Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(d) Moneys appropriated from the California Teleconnect Fund Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(e) Moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are subject to Section 16320 of the Government Code. If the commission determines a need for moneys in the California Teleconnect Fund Administrative Committee Fund, the commission shall notify the Director of Finance of the need, as specified in Section 16320 of the Government Code. The commission may not increase the rates authorized by the commission to fund the program specified in subdivision (b) while moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are outstanding unless both of the following conditions are satisfied:

(1) The Director of Finance, after making a determination pursuant to subdivision (b) of Section 16320 of the Government Code, does not order repayment of all or a portion of any loan from the California Teleconnect Fund Administrative Committee Fund within 30 days of notification by the commission of the need for the moneys.

(2) The commission notifies the Director of Finance and the Chairperson of the Joint Legislative Budget Committee in writing that it intends to increase the rates authorized by the commission to fund the program specified in subdivision (a). The notification required pursuant to this paragraph shall be made 30 days in advance of the intended rate increase.

(f) Subdivision (e) shall become inoperative upon full repayment or discharge of all moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003.

SEC. 4. Section 280.5 is added to the Public Utilities Code, to read:

280.5. (a) Of the revenues from fees collected pursuant to Section 14666.8 of the Government Code after the operative date of this section,

except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to the operative date of the section, 15 percent shall be available, upon appropriation by the Legislature, for the purpose of addressing the state's digital divide.

(b) Revenues described in subdivision (a) shall be deposited in the Digital Divide Account, which is hereby established in the California Teleconnect Fund Administrative Committee Fund established pursuant to Section 270, to be used only for digital divide pilot projects. Not more than 5 percent of the revenues described in subdivision (a), may be used to pay the costs incurred in connection with the administration of digital divide pilot projects by the commission.

(c) (1) The Digital Divide Grant Program is hereby established subject to the availability of funding pursuant to this section. The commission may not implement the grant program until the commission projects that at least five hundred thousand dollars ($500,000) will be available in the Digital Divide Account during the calendar year following implementation, based on money collected pursuant to Section 14666.8 of the Government Code.

(2) The commission shall provide grants pursuant to this subdivision on a competitive basis subject to criteria to be established by the commission and in a way that disburses the funds widely, including urban and rural areas. Grants shall be awarded to community-based nonprofit organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for the purpose of funding community technology programs.

(3) Recipients of grants pursuant to this subdivision shall report to the commission annually on the effectiveness of the grant program.

(4) The commission shall report to the Legislature and the Governor annually on the effectiveness of the program administered pursuant to this subdivision.

(d) For purposes of this section, ''community technology programs'' means a program that is engaged in diffusing technology in local communities and training local communities in the use of technology, especially local communities that otherwise would have no access or limited access to the Internet and other technologies.

(e) For purposes of this section, ''digital divide projects'' means community technology programs involved in activities that include, but are not limited to, the following:

(1) Providing open access to and opportunities for training in technology.

(2) Developing content relevant to the interests and wants of the local community.

(3) Preparing youth for opportunities in the new economy through multimedia training and skills.

(4) Harnessing technology for e-government services.

CHAPTER 821

An act to add Article 9.1 (commencing with Section 41998) to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, relating to air quality.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) State and federal scientific health agencies have determined that perchloroethylene is either a probable, possible, or known carcinogen.

(b) Occupational health studies have found elevated rates of lung, cervical, bladder, and other cancers in dry cleaning workers.

(c) Laboratory studies have found increased numbers of cancerous tumor in animals exposed to perchloroethylene.

SEC. 2. Article 9.1 (commencing with Section 41998) is added to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 9.1. Nontoxic Dry Cleaning Incentive Program

41998. (a) (1) The state board shall impose a three dollar ($3.00) per gallon fee on every manufacturer of percholorethylene in the state and on every person that imports perchloroethylene into the state for use in dry cleaning.

(2) The amount of the fee imposed pursuant to paragraph (1) shall increase by one dollar ($1.00) per gallon on January 1, 2005, and shall increase by one dollar ($1.00) each subsequent year, until January 1, 2013, inclusive.

(b) Moneys generated by the fee imposed pursuant to subdivision (a) shall be deposited in the Nontoxic Dry Cleaning Incentive Trust Fund, which is hereby established in the State Treasury.

(c) Moneys deposited in the Nontoxic Dry Cleaning Incentive Trust Fund are available for expenditure by the state board, upon appropriation by the Legislature, to fund the grant program described in Section 41999 and to fund the demonstration project described in subdivision (f) of Section 41999. The state board shall allocate, from the moneys derived

from the imposition of the fee pursuant to this section, moneys that it determines are sufficient to fund the demonstration project described in subdivision (f) of Section 41999, and shall utilize the remaining moneys to fund the grant program.

(d) Not more than 5 percent of the moneys in the fund, calculated annually, may be utilized by the state board to administer the grant and demonstration programs.

(e) The state board shall expend moneys from the fund, upon appropriation by the Legislature, sufficient to repay any General Fund moneys expended to implement the requirements of this article.

41999. (a) The state board shall develop and establish a grant program that provides incentives for dry cleaners in the state that utilize perchloroethylene in their operations to transition to utilizing dry cleaning systems determined by the state board, in consultation with the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Department of Toxic Substances Control, and any other entity the state board determines to be appropriate, to be nontoxic and nonsmog-forming.

(b) To be eligible for a grant pursuant to this section, applicants shall completely replace their percholorethylene-based dry cleaning system with a system that the state board, in consultation with the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Department of Toxic Substances Control, and any other entity the state board determines to be appropriate, has determined to be nontoxic and nonsmog-forming. The state board shall determine the eligibility of grant recipients.

(c) The state board shall make grants available in the amount of ten thousand dollars ($10,000) to any eligible dry cleaning operation for the purchase of a professional dry cleaning system that uses a nontoxic and nonsmog-forming process, as determined by the state board, in consultation with the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Department of Toxic Substances Control, and any other entity the state board determines to be appropriate.

(d) The state board shall ensure that at least 50 percent of the grant moneys provided pursuant to this section are awarded in a manner that directly reduces air contaminants or reduces the public health risk associated with air contaminants in communities with the most significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both.

(e) Commencing January 1, 2007, and every three years thereafter, the state board shall provide a report to the Legislature evaluating effectiveness of the grant program.

(f) The state board shall establish a demonstration program to showcase professional nontoxic and nonsmog forming dry cleaning technologies in the state. The demonstration program shall require 50 percent matching funds to cover the costs of the demonstration program. Any entity may contribute monies as matching funds, including, but not limited to, a state or federal agency, an air pollution control district or air quality management district, a public utility district, or a nonprofit entity. Not more than 30 percent of the funds deposited annually in the Nontoxic Dry Cleaning Incentive Trust Fund may be used for the demonstration program.

CHAPTER 822

An act to add Section 1091.4 to the Government Code, relating to conflicts of interest.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 1091.4 is added to the Government Code, to read:

1091.4. (a) As used in Section 1091, ''remote interest'' also includes a person who has a financial interest in a contract, if all of the following conditions are met:

(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.

(2) The contract is for either of the following:

(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.

(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.

(3) The person did not participate in the formulation of the contract on behalf of the district.

(4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price, that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.

(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

CHAPTER 823

An act to amend Sections 44004 and 45011 of, and to add Section 43501.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 43501.5 is added to the Public Resources Code, to read:

43501.5. (a) In addition to the requirements of this article, and Section 21780 of Title 27 of the California Code of Regulations, a person who is required to file a final closure plan shall also file with the enforcement agency a Labor Transition Plan that includes all of the following:

(1) Provisions that ensure, subject to any requirements already established pursuant to a collective bargaining agreement, preferential reemployment and transfer rights of displaced employees to comparable available employment with the same employer for a period of no less than one year following the closure of the solid waste facility.

(2) Provisions to provide displaced employees assistance in finding comparable employment with other employers.

(3) Provisions to ensure compliance with all applicable provisions of Chapter 4 (commencing with Section 1400) of Part of 4 of Division 2 of the Labor Code.

(b) When submitting the final closure plan, the operator shall submit, in addition to the requirements of subdivision (a), a certification to the board and the enforcement agency that the provisions described in

paragraphs (1) to (3), inclusive, of subdivision (a), will be implemented, subject to any requirements already established under a collective bargaining agreement.

(c) For the purposes of this section, ''comparable employment'' means the same or a substantially similar job classification at equal or greater wage and benefit levels in the same geographic region of the state.

SEC. 2. Section 44004 of the Public Resources Code is amended to read:

44004. (a) An operator of a solid waste facility may not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, the change conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 180 days in advance of the date when the proposed modification is to take place unless the 180-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within 60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. The

enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making its determination pursuant to subdivision (d), the enforcement agency shall submit the proposed determination to the board for comment and hold at least one public hearing on the proposed determination. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the board pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The board shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term ''significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.''

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider recommendations of the Working Group on Environmental Justice and the advisory group made pursuant to Sections 71113 and 71114 and the report required pursuant to Section 71115.

SEC. 3. Section 45011 of the Public Resources Code is amended to read:

45011. (a) If an enforcement agency determines that a solid waste facility or disposal site, is in violation of this division, any regulations adopted pursuant to this division, any corrective action or cease and desist order, or any other order issued under this division, or poses a potential or actual threat to public health and safety or the environment, the enforcement agency may issue an order establishing a time schedule according to which the facility or site shall be brought into compliance with this division. The order may also provide for a civil penalty, to be imposed administratively by the enforcement agency, in an amount not to exceed five thousand dollars ($5,000) for each day on which a violation occurs, if compliance is not achieved in accordance with that time schedule.

(b) Before issuing an order that imposes a civil penalty pursuant to subdivision (a), an enforcement agency shall do both of the following:

(1) Notify the operator of the solid waste facility that the facility is in violation of this division.

(2) Upon the request of the operator of the solid waste facility, meet with the operator of the solid waste facility to clarify regulatory requirements and to determine what actions, if any, that the operator may voluntarily take to bring the facility into compliance by the earliest feasible date.

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 824

An act to amend Sections 1301, 4000, and 13113 of, to repeal Sections 1501 and 1502 of, and to repeal and add Section 1500 of, the Elections Code, relating to elections.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 1301 of the Elections Code is amended to read:

1301. (a) Except as required by Section 57379 of the Government Code, and except as provided in subdivision (b), a general municipal election shall be held on an established election date pursuant to Section 1000.

(b) (1) Notwithstanding subdivision (a), a city council may enact an ordinance, pursuant to Division 10 (commencing with Section 10000), requiring its general municipal election to be held on the same day as the statewide direct primary election, the day of the statewide general election, or on the day of school district elections as set forth in Section 1302. Any ordinance adopted pursuant to this subdivision shall become operative upon approval by the board of supervisors.

(2) In the event of consolidation, the general municipal election shall be conducted in accordance with all applicable procedural requirements of this code pertaining to that primary, general, or school district election, and shall thereafter occur in consolidation with that election.

(c) If a city adopts an ordinance described in subdivision (b), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date specified by the city council, in accordance with subdivision (b), unless the ordinance in question is later repealed by the city council.

(d) If the date of a general municipal election is changed pursuant to subdivision (b), at least one election shall be held before the ordinance, as approved by the board of supervisors, may be subsequently repealed or amended.

SEC. 2. Section 1500 of the Elections Code is repealed.

SEC. 3. Section 1500 is added to the Elections Code, to read:

1500. The established mailed ballot election dates are as follows:

(a) The first Tuesday after the first Monday in May of each year.

(b) The first Tuesday after the first Monday in June of each even-numbered year.

(c) The last Tuesday in August of each year.

SEC. 4. Section 1501 of the Elections Code is repealed.

SEC. 5. Section 1502 of the Elections Code is repealed.

SEC. 6. Section 4000 of the Elections Code is amended to read:

4000. A local, special, or consolidated election may be conducted wholly by mail provided that all of the following conditions apply:

(a) The governing body of the local agency authorizes the use of mailed ballots for the election.

(b) The election is held on an established mailed ballot election date pursuant to Section 1500.

(c) The election is one of the following:

(1) An election in which no more than 1,000 registered voters are eligible to participate.

(2) A maximum property tax rate election as provided for in Section 2287 of the Revenue and Taxation Code.

(3) An election on a measure or measures restricted to (A) the imposition of special taxes, or (B) expenditure limitation overrides, or (C) both (A) and (B), in a city, county, or special district with 5,000 or less registered voters calculated as of the time of the last report of registration by the county elections official to the Secretary of State.

(4) An election on the issuance of a general obligation water bond in accordance with Section 12944.5 of the Water Code.

(5) An election of the Directors of the Monterey Peninsula Water Management District as authorized in Section 122 of Chapter 527 of the Statutes of 1977, known as the Monterey Peninsula Water Management District Law.

(6) An election of the Aliso Water Management Agency, or its affected member agencies, pursuant to Sections 13416 and 13417 of the Water Code.

(7) An election of the San Jacinto Mountain Area Water Study Agency pursuant to Sections 13416 and 13417 of the Water Code.

(8) An election of the San Lorenzo Valley Water District pursuant to Sections 13416 and 13417 of the Water Code.

(9) An election or assessment ballot proceeding required or authorized by Article XIII C or XIII D of the California Constitution. However, when an assessment ballot proceeding is conducted by mail pursuant to this section, the following rules apply:

(A) The proceeding shall be denominated an ''assessment ballot proceeding'' rather than an election.

(B) Ballots shall be denominated ''assessment ballots.''

SEC. 7. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the four major election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing on the first weekday following the last possible day of filing for an election according to subdivision (a) of Section 13112.

(b) Except as provided for runoff elections in subdivision (d), if two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

(d) If two randomized alphabets are drawn for the same election, the results of the second randomized alphabet drawing may be clearly set apart from the first and, if set apart, labeled ''FOR USE IN A RUNOFF ELECTION ONLY.''

SEC. 8. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing on the first weekday following the last possible day of filing for the election according to subdivision (a) of Section 13112.

(b) Except as provided for runoff elections in subdivision (d), if two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each

respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

(d) If two randomized alphabets are drawn for the same election, the results of the second randomized alphabet drawing may be clearly set apart from the first and, if set apart, labeled "FOR USE IN A RUNOFF ELECTION ONLY."

SEC. 9. Section 8 of this bill incorporates amendments to Section 13113 of the Elections Code proposed by both this bill and SB 1024. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 13113 of the Elections Code, and (3) this bill is enacted after SB 1024, in which case Section 7 of this bill shall not become operative.

CHAPTER 825

An act to add and repeal Part 8.5 (commencing with Section 2050) of Division 2 of the Labor Code, relating to car washes.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) California is home to hundreds of full-time car washes that employ tens of thousands of car wash workers.

(b) The work performed by car wash employees is laborious, fast paced, and potentially hazardous.

(c) Car wash employees work long hours and may service hundreds of vehicles on any given workday.

(d) According to various legal advocates, the car wash industry is plagued with labor law violations, including minimum wage, overtime, and rest and meal period violations.

(e) Some car wash employees, commonly known as "propineros,"are not paid a wage by their employers and receive only the tips given by customers.

(f) Some other car wash employees are paid below the minimum wage and not paid at an overtime rate for overtime hours worked.

(g) A number of car wash employees have been harassed, intimidated, and mistreated by their employers because of their immigration status.

(h) As a result of low wages and widespread labor law violations, some car wash employees are forced to work in substandard working conditions.

(i) Existing labor laws and enforcement efforts have failed to remedy these problems.

(j) Therefore, it is the intent of the Legislature, in enacting this act, to establish a system of registration, bonding requirements, and enforcement to impose prompt and effective civil sanctions for the violation of the provisions set forth in this act or any provision of law applicable to the employment of workers in the car washing and polishing industry.

SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

PART 8.5. CAR WASHES

CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) ''Car washing and polishing'' means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. ''Car washing and polishing'' does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) ''Employer'' means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) ''Employer'' does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. ''Employer'' does not include any licensed vehicle dealer, car rental agency, or automotive repair business that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. ''Employer'' does not include any self-service car wash or automated car wash that has employees for cashiering or maintenance purposes only.

(c) ''Employee'' means any person, including an alien or minor, who renders actual car washing and polishing services in any business for an

employer, whether for tips or for wages, and whether wages are calculated by time, piece, task, commission, or other method of calculation, and whether the services are rendered on a commission, concessionaire, or other basis.

(d) ''Commissioner'' means the Labor Commissioner.

2052. Every employer shall keep accurate records for three years, showing all of the following:

(a) The names and addresses of all employees engaged in rendering actual services for any business of the employer.

(b) The hours worked daily by each employee, including the times the employee begins and ends each work period.

(c) All gratuities received daily by the employer, whether received directly from the employee or indirectly by deduction from the wages of the employee or otherwise.

(d) The wage and wage rate paid each payroll period.

(e) The age of all minor employees.

(f) Any other conditions of employment.

2053. The Division of Labor Standards and Enforcement shall enforce this chapter. The commissioner may adopt any regulations necessary to carry out the provisions of this chapter.

CHAPTER 2. REGISTRATION

2054. Every employer shall register with the commissioner annually.

2055. The commissioner may not permit any employer to register, nor may the commissioner permit any employer to renew registration until all of the following conditions are satisfied:

(a) The employer has applied for registration to the commissioner by presenting proof of compliance with the local government's business licensing or regional regulatory requirements.

(b) The employer has obtained a surety bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be not less than fifteen thousand dollars ($15,000). The employer shall file a copy of the bond with the commissioner.

(1) The bond required by this section shall be in favor of, and payable to the people of the State of California and shall be for the benefit of any employee damaged by his or her employer's failure to pay wages, interest on wages, or fringe benefits, or damaged by violation of Section 351 or 353.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send written notice to both the employer and the commissioner, identifying the bond and the date of the cancellation or termination.

(3) An employer may not conduct any business until the employer obtains a new surety bond and files a copy of it with the commissioner.

(c) The employer has documented that a current workers' compensation insurance policy is in effect for the employees.

(d) The employer has paid the fees established pursuant to Section 2059.

2056. When a certificate of registration is originally issued or renewed under this chapter, the commissioner shall provide related and supplemental information to the registrant regarding business administration and applicable labor laws.

2057. Proof of registration shall be by an official Division of Labor Standards Enforcement registration form. Each employer shall post the registration form where it may be read by the employees during the workday.

2058. At least 30 days prior to the expiration of each registrant's registration, the commissioner shall mail a renewal notice to the last known address of the registrant. However, omission of the commissioner to provide the renewal notice in accordance with this subdivision may not excuse a registrant from making timely application for renewal of registration, may not be a defense in any action or proceeding involving failure to renew registration, and may not subject the commissioner to any legal liability.

2059. (a) The commissioner shall collect from employers a registration fee of two hundred fifty dollars ($250) for each branch location. The commissioner may periodically adjust the registration fee for inflation to ensure that the fee is sufficient to fund all costs to administer and enforce the provisions of this part.

(b) In addition to the fee specified in subdivision (a), each employer shall be assessed an annual fee of fifty dollars ($50) for each branch location which shall be deposited in the Car Wash Worker Restitution Fund.

2060. No employer may conduct any business without complying with the registration and bond requirements of this chapter.

2061. The commissioner may not approve the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner, subscribed, and sworn by the employer containing the following:

(1) The name of the business entity and, if applicable, its fictitious or ''doing business as'' name.

(2) The form of the business entity and, if a corporation, all of the following:

(A) The date of incorporation.

(B) The state in which incorporated.

(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.

(D) Whether the corporation is in good standing with the Secretary of State.

(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.

(4) The business' address and telephone number and, if applicable, the addresses and telephone numbers of any branch locations.

(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.

(6) The names, residential addresses, telephone numbers, and Social Security numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant's office, regardless of form of business entity.

(C) All persons, except bona fide employees on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business' current workers' compensation coverage.

(8) Whether any persons named in response to subparagraphs (A), (B), or (C) of subparagraph (6) of this section presently:

(A) Owe any unpaid wages.

(B) Have unpaid judgments outstanding.

(C) Have any liens or suits pending in court against himself or herself.

(D) Owe payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.

An applicant who answers affirmatively to any item described in paragraph (8) shall provide, as part of the application, additional information on the unpaid amounts, including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) Whether any persons named in response to subparagraphs (A), (B), or (C) of paragraph (6) of this section have ever been cited or assessed any penalty for violating any provision of the Labor Code.

An applicant who answers affirmatively to any item described in paragraph (9) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(b) The employer has paid a registration fee to the commissioner pursuant to subdivision (d) of Section 2055.

2062. The commissioner may not register or renew the registration of an employer in any of the following circumstances:

(a) The employer has not fully satisfied any final judgment for unpaid wages due to an employee or former employee of a business for which the employer is required to register under this chapter.

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department had made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

(c) The employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act (FICA) to the Internal Revenue Service and the employer has not fully paid the amount or delinquency for those unpaid contributions.

2063. On the Web site of the Department of Industrial Relations the Labor Commissioner shall post a list of registered car washing and polishing businesses, including the name, address, registration number, and effective dates of registration.

2064. An employer who fails to register pursuant to Section 2054 is subject to a civil fine of one hundred dollars ($100) for each calendar day, not to exceed ten thousand dollars ($10,000), the employer conducts car washing and polishing while unregistered.

2065. (a) (1) The Car Wash Worker Restitution Fund is established in the State Treasury. Fifty dollars ($50) of each registrant's annual registration fee required pursuant to Section 2059 shall be deposited into this fund. In addition, 50 percent of the fines collected pursuant to Section 2064 shall be deposited into the fund.

(2) Moneys from the fund shall be disbursed, upon appropriation by the Legislature, by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(3) The Department of Industrial Relations may establish through regulation any procedures necessary to carry out the provisions of this section.

(b) The Car Wash Worker Fund is established in the State Treasury. Upon appropriation by the Legislature, the remainder of the registrant's annual registration fee collected pursuant to Section 2059 shall be

applied to costs incurred by the commissioner in administering the provisions of this part and enforcement and investigation of the car washing and polishing industry.

CHAPTER 3. SUCCESSORSHIP

2066. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

CHAPTER 4. OPERATION

2067. This part shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. It is the intent of the Legislature to instruct the Labor Commissioner, prior to January 1, 2007, to study and report to the Legislature on the status of labor law violations and enforcement in the car washing and polishing industry.

CHAPTER 826

An act to add Section 60605.3 to the Education Code, relating to curriculum.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

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

(a) Learning a second language enhances a pupil's academic skills by increasing reading, writing, and mathematics abilities, thereby improving scores on verbal and nonverbal performance tests.

(b) Requiring all pupils to learn a second language helps pupils from different backgrounds to interact with each other and build self-esteem.

(c) All pupils can and should be proficient in at least one language in addition to English.

(d) The University of California and the California State University both require a minimum of two years of language study as part of their admission criteria.

(e) To be most effective in today's global society, a person must have a knowledge of other cultures and the ability to interact with people from different cultures in both California and throughout the world.

(f) More than 70 federal agencies and numerous state agencies desire to hire persons who are fluent in languages other than English, and shortages in bilingual personnel have adversely affected national and state operations and security.

(g) The court system maintains a pool of qualified interpreters and translators to carry out its legal duties, and the state and federal penal systems depend on a bilingual workforce to maintain an orderly environment.

(h) Language competence is critical to the United States' defense needs as evidenced by the fact that in 2002, the army designated 15,000 positions as requiring language proficiency in at least one of 62 languages, the Department of State required 29 percent of its foreign service positions to have some level of language proficiency, and the Federal Bureau of Investigation employed 1,792 special agents with language skills in more than 40 languages.

(i) As California corporations continue to establish production facilities in developing world countries, there is an increasing need for linguistic competence and cultural understanding in languages other than English.

(j) For all of these reasons, it is imperative that pupils begin learning a language other than English at the earliest age possible.

(k) This act is intended to correlate the curriculum framework, which is scheduled for adoption by June 1, 2009, with the content standards adopted pursuant to this section.

SEC. 2. Section 60605.3 is added to the Education Code, to read:

60605.3. (a) On or before June 1, 2009, the State Board of Education shall adopt content standards, pursuant to recommendations developed by the Superintendent of Public Instruction, for teaching foreign languages in kindergarten and grades 1 to 12, inclusive.

(b) The content standards shall support the goals of Section 51212 and subdivision (c) of Section 51220 by including all of the following:

(1) A summary of the language goals which recognizes that instruction may begin in elementary or secondary school.

(2) A description of individual language skills that should be taught and attained at each level.

(3) Course content that is aligned with findings from research on second language acquisition and education.

(4) Course content that is aligned with the admission requirements for the California State University and the University of California.

(c) The content standards may be used by school districts to develop language programs and course assessments but are not mandatory.

SEC. 3. The Commission on Teacher Credentialing, in revising subject matter standards and examinations for teachers to conform to the state content and performance standards for pupils pursuant to paragraph (5) of subdivision (b) of Section 44259, may do so within its scheduled subject matter standards and examination validation timeframe.

CHAPTER 827

An act to add Chapter 7 (commencing with Section 132600) to Division 12.7 of the Public Utilities Code, relating to transportation.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Chapter 7 (commencing with Section 132600) is added to Division 12.7 of the Public Utilities Code, to read:

CHAPTER 7. EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

132600. For purposes of this chapter, the following terms have the following meanings:

(a) The ''authority'' is the Exposition Metro Line Construction Authority created under this chapter.

(b) The ''board'' is the governing board of the authority.

(c) The ''commission'' is the California Transportation Commission.

(d) The ''LACMTA'' is the Los Angeles County Metropolitan Transportation Authority.

(e) The ''project'' is the Los Angeles-Exposition Metro Line light rail project extending from the Metro Rail Station at 7th Street and Flower Street in the City of Los Angeles to the downtown of the City of Santa Monica.

132605. The authority is hereby created for the purpose of awarding and overseeing final design and construction contracts for completion of the project.

132610. (a) The authority has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the project, including, but not limited to, all of the following:

(1) Acceptance of grants, fees, allocations, and transfers of funds from federal, state, and local agencies, and private entities.

(2) Acquiring, through purchase or through eminent domain proceedings, any property necessary for, incidental to, or convenient for, the exercise of the powers of the authority, provided the authority shall use existing right-of-ways where feasible.

(3) Incurring indebtedness, secured by pledges of revenue available for project completion.

(4) Contracting with public and private entities for the planning, design, and construction of the project. These contracts may be assigned separately or may be combined to include any or all tasks necessary for completion of the project.

(5) Entering into cooperative or joint development agreements with local governments or private entities. These agreements may be entered into for the purpose of sharing costs, selling or leasing land, air, or development rights, providing for the transferring of passengers, making pooling arrangements, or for any other purpose that is necessary for, incidental to, or convenient for the full exercise of the powers granted to the authority. For purposes of this paragraph, ''joint development'' includes, but is not limited to, an agreement with any person, firm, corporation, association, or organization for the operation of facilities or development of projects adjacent to, or physically or functionally related to, the project.

(6) Relocation of utilities, as necessary for completion of the project.

(b) The duties of the authority include, but are not limited to, all of the following:

(1) Conducting financial studies, planning, and engineering necessary for completion of the project.

(2) (A) Adoption of an administrative code for administration of the authority in accordance with any applicable laws, including, but not limited to, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), contracting and procurement laws, laws relating to contracting goals for minority and women business participation, and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) (i) The administrative code adopted under subparagraph (A) shall include a code of conduct for employees and board members that is consistent with Sections 84308 and 87103 of the Government Code and prohibits board members and staff from accepting gifts valued at ten dollars ($10) or more from contractors, potential contractors, or their subcontractors.

(ii) The code shall require the disclosure, on the record, of the proceedings by the officer of the agency who receives a contribution within the preceding 24 months in an amount of more than two hundred fifty dollars ($250) from a party or participant to a proceeding, and the disclosure by the party or participant.

(iii) The code shall provide that no officer of the agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding, as described in Section 84308 of the Government Code, if the officer has willfully or knowingly received a contribution in the amount of more than two hundred fifty dollars ($250) within the preceding 24 months from a party or his or her agent, or from any participant or his or her agent, if the participant has a financial interest in the decision.

(iv) Any officer deemed ineligible to participate in a proceeding due to the provisions of this code of conduct may be replaced for the purposes of that proceeding by an appointee chosen by the appropriate appointing authority.

(v) Under the code of conduct, board members shall be deemed to have a financial interest in a decision within the meaning of Section 87100 of the Government Code if the decision involves the donor of, or intermediary or agent for a donor of, a gift or gifts aggregating ten dollars ($10) or more in value within the 12 months prior to the time the decision was made.

(3) As necessary for final design and construction, completion of a detailed management, implementation, safety, and financial plan for the project and submission of the plan to the Governor, the Legislature, and the commission.

(c) The authority shall make reasonable progress, as determined by the commission, in the final design and construction of the project.

(d) The duties and responsibilities imposed by this section shall be contingent upon allocation of federal and local funds by the LACMTA for these purposes.

132615. (a) The authority shall be governed by a board consisting of seven voting members who shall be appointed as follows:

(1) Two members shall be appointed by the City Councils of the Cities of Santa Monica and Culver City with each city council appointing one member by a majority vote of the membership of that city council.

(2) Two members shall be appointed by the Los Angeles County Board of Supervisors.

(3) One member shall be appointed by the LACMTA.

(4) Two members shall be appointed by the City Council of the City of Los Angeles by a majority vote of its membership.

(b) All members shall serve a term of not more than four years, with no limit on the number of terms that may be served by any person.

(c) Each appointing authority shall also appoint an alternate member to serve in a member's absence. If the position of a voting member becomes vacant, the alternate member shall serve until the position is filled as required pursuant to subdivision (a).

(d) Members of the board are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(e) Four members of the board shall constitute a quorum.

(f) The board shall elect a chairperson and vice chairperson from among the membership of the board.

(g) Each member of the board may be compensated at a rate of not more than one hundred fifty dollars ($150) per day spent attending to the business of the authority. Compensation, if paid, shall not exceed six hundred dollars ($600) per month, plus expenses directly related to the performance of duties imposed by the authority, including, but not limited to, travel and personal expenses.

(h) The Chief Executive Officer of the LACMTA shall serve on the board as an ex officio, nonvoting member.

132620. (a) The board may appoint an executive director to serve at the pleasure of the authority.

(b) The executive director is exempt from all civil service provisions and shall be paid a salary established by the board.

(c) The executive director may appoint staff or retain consultants as necessary to carry out the duties of the authority.

(d) All contracts approved and awarded by the executive director shall be awarded in accordance with state and federal laws relating to procurement. Awards shall be based on price or competitive negotiation, or on both of those things.

132625. The LACMTA shall identify and expeditiously enter into an agreement or agreements with the authority to do all of the following:

(a) Hold in trust with the authority all real and personal property, and any other assets accumulated in the planning, design, and construction of the project, including, but not limited to, rights-of-way, documents, third-party agreements, contracts, and design documents, as necessary for completion of the project.

(b) Outline the design review, construction, and testing process that acknowledges LACMTA's direct role in the review of the project to

ensure the final project will be compatible, functionally connected, and operative within LACMTA's existing metro rail system.

(c) Describe the various funding sources and the obligations of the authority to assist LACMTA obtain federal, state, and local funds for the project, and the authority's obligations and duties upon receipt of the funds necessary to construct the project.

(d) Describe all financial elements of the project, and the budget approved for the project.

132635. The authority shall enter into a memorandum of understanding with the LACMTA that shall specifically address the ability of the LACMTA to review any significant changes in the scope of the design or construction, or both design and construction, of the project. For purposes of this section, the term ''significant change'' means any change of mode or technology, or any other substantive change that affects the connectivity and operation of the project as part of the overall transit system operated by the LACMTA, or any combination of those things. Design and construction of a light rail project that is consistent with the current scope of the project shall not be deemed to be a significant change in the scope of the project and shall not require concurrence by the LACMTA.

132640. The authority shall not encumber any future farebox revenue anticipated from the operation of the project.

132645. The authority shall not encumber the project with any obligation that is transferable to the LACMTA upon completion of the design and construction of the project. The design and construction to be administered by the authority does not include rolling stock, which is a component of the operation of the project and shall be administered by the LACMTA.

132650. The authority shall be dissolved upon completion of construction of the light rail project. The LACMTA shall assume responsibility for operating the project upon dissolution of the authority.

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

CHAPTER 828

An act to amend Sections 32261, 32262, 35183, 35294.10, 35294.11, 35294.12, 35294.13, 35294.21, 35294.22, 51263, and 51264 of, to amend and renumber Sections 32280, 32290, 32295, 35294, 35294.1, 35294.2, 35294.3, 35294.4, 35294.5, 35294.6, 35294.7, and 35294.8 of, to amend and renumber the headings of Article 3 (commencing with Section 32280) of, Article 4 (commencing with Section 32290) of, and Article 5 (commencing with Section 32295) of Chapter 2.5 of Part 19 of, and Article 10.3 (commencing with Section 35294) of Chapter 2 of Part 21 of, to add Article 5.3 (commencing with Section 32290) to Chapter 2.5 of Part 19 of, to repeal Section 35294.9 of, and to repeal Article 2 (commencing with Section 32270) of Chapter 2.5 of Part 19 of, the Education Code, relating to school safety.

[Approved by Governor October 10, 2003. Filed with Secretary of State October 11, 2003.]

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

SECTION 1. Section 32261 of the Education Code is amended to read:

32261. (a) The Legislature hereby recognizes that all pupils enrolled in the state public schools have the inalienable right to attend classes on school campuses which are safe, secure, and peaceful. The Legislature also recognizes that pupils cannot fully benefit from an educational program unless they attend school on a regular basis. In addition, the Legislature further recognizes that school crime, vandalism, truancy, and excessive absenteeism are significant problems on far too many school campuses in the state.

(b) The Legislature hereby finds and declares that the establishment of an interagency coordination system is the most efficient and long-lasting means of resolving school and community problems of truancy and crime, including vandalism, drug and alcohol abuse, gang membership, gang violence, and hate crimes.

(c) It is the intent of the Legislature in enacting this chapter to support California public schools as they develop their mandated comprehensive safety plans that are the result of a systematic planning process, that include strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on school campuses, and that address the safety concerns of local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, school police, and other school employees interested in the prevention of school crime and violence.

(d) It is the intent of the Legislature in enacting this chapter to encourage school districts, county offices of education, law enforcement agencies, and youth-serving agencies to develop and implement interagency strategies, in-service training programs, and activities that will improve school attendance and reduce school crime and violence, including vandalism, drug and alcohol abuse, gang membership, gang violence, hate crimes, bullying, teen relationship violence, and discrimination and harassment, including, but not limited to, sexual harassment.

(e) It is the intent of the Legislature in enacting this chapter that the School/Law Enforcement Partnership shall not duplicate any existing gang or drug and alcohol abuse program currently provided for schools.

SEC. 2. Section 32262 of the Education Code is amended to read:

32262. (a) There is hereby established the School/Law Enforcement Partnership, comprised of the Superintendent of Public Instruction and the Attorney General. The duties of the partnership shall consist of all of the following:

(1) The development of programs and policies necessary to implement the provisions of Article 5 (commencing with Section 32280).

(2) The administration of safe school programs and all training, procedures, and activities conducted pursuant to this chapter.

(3) Cooperation with other states and state and federal agencies on matters relating to school safety.

(b) As used in this chapter, the term ''partnership'' means the School/Law Enforcement Partnership established by this section.

SEC. 3. Article 2 (commencing with Section 32270) of Chapter 2.5 of Part 19 of the Education Code is repealed.

SEC. 4. The heading of Article 3 (commencing with Section 32280) of Chapter 2.5 of Part 19 of the Education Code is amended and renumbered, to read:

Article 2. Conferences

SEC. 5. Section 32280 of the Education Code is amended and renumbered to read:

32265. (a) The partnership shall sponsor a at least two regional conferences for school districts, county offices of education, youth serving agencies, allied agencies, community-based organizations, and law enforcement agencies to identify exemplary programs and techniques that have been effectively utilized to reduce school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership and gang violence, truancy, and excessive absenteeism.

(b) The conference may include, but need not be limited to, information on all of the following topics:

(1) Interagency collaboration between schools, youth serving agencies, law enforcement agencies, and others.

(2) School attendance.

(3) School safety.

(4) Citizenship education.

(5) Drug and alcohol abuse.

(6) Child abuse prevention, detection, and reporting.

(7) Parental education.

(8) Crisis response training.

(9) Bullying prevention.

(10) Threat assessment.

(11) Conflict resolution and youth mediation.

(12) Teen relationship violence.

(13) Discrimination and harassment reporting and prevention, including, but not limited to, sexual harassment reporting and prevention.

(14) Hate crime reporting and prevention.

(15) Reporting and prevention of abuse against pupils with disabilities.

SEC. 6. The heading of Article 4 (commencing with Section 32290) of Chapter 2.5 of Part 19 of the Education Code is amended and renumbered, to read:

Article 3. School Safety Cadre

SEC. 7. Section 32290 of the Education Code is amended and renumbered to read:

32270. (a) The partnership shall establish a statewide school safety cadre for the purpose of facilitating interagency coordination and collaboration among school districts, county offices of education, youthserving agencies, allied agencies, community-based organizations, and law enforcement agencies to improve school attendance, encourage good citizenship, and to reduce school violence, school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership and gang violence, truancy rates, bullying, teen relationship violence, and discrimination and harassment, including, but not limited to, sexual harassment.

(b) The partnership may appoint up to 100 professionals from education agencies, community-based organizations, allied agencies, and law enforcement to the statewide cadre.

(c) The partnership shall provide training to the statewide cadre representatives to enable them to initiate and maintain school

community safety programs among school districts, county offices of education, youthserving agencies, allied agencies, community-based organizations, and law enforcement agencies in each region.

SEC. 8. The heading of Article 5 (commencing with Section 32295) of Chapter 2.5 of Part 19 of the Education Code is amended and renumbered, to read:

Article 4. Program Assessment

SEC. 9. Section 32295 of the Education Code is amended and renumbered to read:

32275. The partnership shall annually assess the programs and activities under the Interagency School Safety Demonstration Act of 1985. The assessment shall include, but not be limited to, all of the following:

(a) An assessment of the appropriateness and effectiveness of the statewide conferences conducted pursuant to Article 2 (commencing with Section 32265).

(b) An assessment of the extent to which the statewide school safety cadre has been able to provide appropriate technical assistance to school districts, county offices of education, and law enforcement agencies.

(c) An assessment of the effectiveness of the ongoing training on safe schools and crisis response provided pursuant to subdivision (c) of Section 32270.

SEC. 10. Section 35183 of the Education Code is amended to read:

35183. (a) The Legislature finds and declares each of the following:

(1) The children of this state have the right to an effective public school education. Both students and staff of the primary, elementary, junior and senior high school campuses have the constitutional right to be safe and secure in their persons at school. However, children in many of our public schools are forced to focus on the threat of violence and the messages of violence contained in many aspects of our society, particularly reflected in gang regalia that disrupts the learning environment.

(2) ''Gang-related apparel'' is hazardous to the health and safety of the school environment.

(3) Instructing teachers and administrators on the subtleties of identifying constantly changing gang regalia and gang affiliation takes an increasing amount of time away from educating our children.

(4) Weapons, including firearms and knives, have become common place upon even our elementary school campuses. Students often conceal weapons by wearing clothing, such as jumpsuits and overcoats, and by carrying large bags.

(5) The adoption of a schoolwide uniform policy is a reasonable way to provide some protection for students. A required uniform may protect students from being associated with any particular gang. Moreover, by requiring schoolwide uniforms teachers and administrators may not need to occupy as much of their time learning the subtleties of gang regalia.

(6) To control the environment in public schools to facilitate and maintain an effective learning environment and to keep the focus of the classroom on learning and not personal safety, schools need the authorization to implement uniform clothing requirements for our public school children.

(7) Many educators believe that school dress significantly influences pupil behavior. This influence is evident on school dressup days and color days. Schools that have adopted school uniforms experience a ''coming together feeling,'' greater school pride, and better behavior in and out of the classroom.

(b) The governing board of any school district may adopt or rescind a reasonable dress code policy that requires pupils to wear a schoolwide uniform or prohibits pupils from wearing ''gang-related apparel'' if the governing board of the school district approves a plan that may be initiated by an individual school's principal, staff, and parents and determines that the policy is necessary for the health and safety of the school environment. Individual schools may include the reasonable dress code policy as part of its school safety plan, pursuant to Section 32281.

(c) Adoption and enforcement of a reasonable dress code policy pursuant to subdivision (b) is not a violation of Section 48950. For purposes of this section, Section 48950 shall apply to elementary, high school, and unified school districts. If a schoolwide uniform is required, the specific uniform selected shall be determined by the principal, staff, and parents of the individual school.

(d) A dress code policy that requires pupils to wear a schoolwide uniform shall not be implemented with less than six months' notice to parents and the availability of resources to assist economically disadvantaged pupils.

(e) The governing board shall provide a method whereby parents may choose not to have their children comply with an adopted school uniform policy.

(f) If a governing board chooses to adopt a policy pursuant to this section, the policy shall include a provision that no pupil shall be penalized academically or otherwise discriminated against nor denied attendance to school if the pupil's parents chose not to have the pupil comply with the school uniform policy. The governing board shall

continue to have responsibility for the appropriate education of those pupils.

(g) A policy adopted pursuant to this section shall not preclude pupils that participate in a nationally recognized youth organization from wearing organization uniforms on days that the organization has a scheduled meeting.

SEC. 11. The heading of Article 10.3 (commencing with Section 35294) of Chapter 2 of Part 21 of the Education Code is amended and renumbered, to read:

Article 5. School Safety Plans

SEC. 12. Section 35294 of the Education Code is amended and renumbered to read:

32280. It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process. For the purposes of this section, law enforcement agencies include local police departments, county sheriffs' offices, school district police or security departments, probation departments, and district attorneys' offices. For purposes of this section, a ''safety plan'' means a plan to develop strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus.

SEC. 13. Section 35294.1 of the Education Code, as amended by Section 1 of Chapter 735 of the Statutes of 2002, is amended and renumbered to read:

32281. (a) Each school district and county office of education is responsible for the overall development of all comprehensive school safety plans for its schools operating kindergarten or any of grades 1 to 12, inclusive.

(b) (1) Except as provided in subdivision (d) with regard to a small school district, the schoolsite council established pursuant to Section 52012 or 52852 shall write and develop a comprehensive school safety plan relevant to the needs and resources of that particular school.

(2) The schoolsite council may delegate this responsibility to a school safety planning committee made up of the following members:

(A) The principal or the principal's designee.

(B) One teacher who is a representative of the recognized certificated employee organization.

(C) One parent whose child attends the school.

(D) One classified employee who is a representative of the recognized classified employee organization.

(E) Other members, if desired.

(3) The schoolsite council shall consult with a representative from a law enforcement agency in the writing and development of the comprehensive school safety plan.

(4) In the absence of a schoolsite council, the members specified in paragraph (2) shall serve as the school safety planning committee.

(c) Nothing in this article shall limit or take away the authority of school boards as guaranteed under this code.

(d) (1) Subdivision (b) shall not apply to a small school district, as defined in paragraph (2), if the small school district develops a districtwide comprehensive school safety plan that is applicable to each schoolsite.

(2) As used in this article, ''small school district'' means a school district that has fewer than 2,501 units of average daily attendance at the beginning of each fiscal year.

(e) (1) When a principal or his or her designee verifies through local law enforcement officials that a report has been filed of the occurrence of a violent crime on the schoolsite of an elementary or secondary school at which he or she is the principal, the principal or the principal's designee may send to each pupil's parent or legal guardian and each school employee a written notice of the occurrence and general nature of the crime. If the principal or his or her designee chooses to send the written notice, the Legislature encourages the notice be sent no later than the end of business on the second regular work day after the verification. If, at the time of verification, local law enforcement officials determine that notification of the violent crime would hinder an ongoing investigation, the notification authorized by this subdivision shall be made within a reasonable period of time, to be determined by the local law enforcement agency and the school district. For purposes of this section, an act that is considered a ''violent crime'' shall meet the definition of Section 67381 and be an act for which a pupil could or would be expelled pursuant to Section 48915.

(2) Nothing in this subdivision shall create any liability in a school district or its employees for complying with paragraph (1).

SEC. 14. Section 35294.2 of the Education Code is amended and renumbered to read:

32282. (a) The comprehensive school safety plan shall include, but not necessarily be limited to, the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's

procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

(A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(B) Disaster procedures, routine and emergency including, but not limited to, adaptations for pupils with disabilities in accordance with the American with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(C) Policies pursuant to subdivision (d) of Section 48915 for pupils who committed an act listed in subdivision (c) of Section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with Section 48900) of Chapter 6 of Part 27.

(D) Procedures to notify teachers of dangerous pupils pursuant to Section 49079.

(E) A discrimination and harassment policy consistent with the prohibition against discrimination contained in Chapter 2 (commencing with Section 200) of Part 1.

(F) The provisions of any schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing ''gang-related apparel,'' if the school has adopted such a dress code. For those purposes, the comprehensive school safety plan shall define ''gang-related apparel.'' The definition shall be limited to apparel that, if worn or displayed on a school campus, reasonably could be determined to threaten the health and safety of the school environment. Any schoolwide dress code established pursuant to this section and Section 35183 shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, ''gang-related apparel'' shall not be considered a protected form of speech pursuant to Section 48950.

(G) Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.

(H) A safe and orderly environment conducive to learning at the school.

(I) The rules and procedures on school discipline adopted pursuant to Sections 35291 and 35291.5.

(J) Hate crime reporting procedures pursuant to Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code.

(b) It is the intent of the Legislature that schools develop comprehensive school safety plans using existing resources, including the materials and services of the partnership, pursuant to this chapter. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled ''Safe Schools: A Planning Guide for Action'' in conjunction with developing their plan for school safety.

(c) Grants to assist schools in implementing their comprehensive school safety plan shall be made available through the partnership as authorized by Section 32285.

(d) Each schoolsite council or school safety planning committee in developing and updating a comprehensive school safety plan shall, where practical, consult, cooperate, and coordinate with other schoolsite councils or school safety planning committees.

(e) The comprehensive school safety plan shall be evaluated and amended, as needed, by the school safety planning committee no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 32288.

SEC. 15. Section 35294.3 of the Education Code is amended and renumbered to read:

32283. The Department of Justice and the State Department of Education, in accordance with Section 32262, shall contract with one or more professional trainers to coordinate statewide workshops for school districts, county offices of education, and schoolsite personnel, and in particular school principals, to assist them in the development of their respective school safety and crisis response plans. The Department of Justice and the State Department of Education shall work in cooperation with regard to the workshops coordinated and presented pursuant to the contracts. Implementation of this section shall be contingent upon the availability of funds in the annual Budget Act.

SEC. 16. Section 35294.4 of the Education Code is amended and renumbered to read:

32284. The comprehensive school safety plan may also include, at local discretion of the governing board of the school district and using local funds, procedures for responding to the release of a pesticide or other toxic substance from properties located within one-quarter mile of a school. No funds received from the state may be used for this purpose.

SEC. 17. Section 35294.5 of the Education Code is amended and renumbered to read:

32285. (a) The governing board of a school district, on behalf of one or more schools within the district that have developed a school safety plan, may apply to the Superintendent of Public Instruction for a grant to implement school safety plans. The partnership shall award grants for school safety plans that include, but are not limited to, the following criteria:

(1) Assessment of the recent incidence of crime committed on the school campus.

(2) Identification of appropriate strategies and programs that will provide or maintain a high level of school safety.

(3) Development of an action plan, in conjunction with local law enforcement agencies, for implementing appropriate safety strategies and programs, and determining the fiscal impact of executing the strategies and programs. The action plan shall identify available resources which will provide for implementation of the plan.

(b) The Superintendent of Public Instruction shall award grants pursuant to this section to school districts for the implementation of individual school safety plans in an amount not to exceed five thousand dollars ($5,000) for each school. No grant shall be made unless the school district makes available, for purposes of implementing the school safety plans, an amount of funds equal to the amount of the grant. Grants should be awarded through a competitive process, based upon criteria including, but not limited to, the merit of the proposal and the need for imposing school safety, based on school crime rates.

(c) Any school receiving a grant under this section shall submit to the Superintendent of Public Instruction verified copies of its schoolsite crime report annually for three consecutive years following the receipt of the grant to study the impact of the implementation of the school safety plan on the incidence of crime on the campus of the school.

SEC. 18. Section 35294.6 of the Education Code is amended and renumbered to read:

32286. (a) Each school shall adopt its comprehensive school safety plan by March 1, 2000, and shall review and update its plan by March 1, every year thereafter. A new school campus that begins offering classes to pupils after March 1, 2001, shall adopt a comprehensive school safety plan within one year of initiating operation, and shall review and update its plan by March 1, every year thereafter.

(b) Commencing in July 2000, and every July thereafter, each school shall report on the status of its school safety plan, including a description of its key elements in the annual school accountability report card prepared pursuant to Sections 33126 and 35256.

SEC. 19. Section 35294.7 of the Education Code is amended and renumbered to read:

32287. In the event that the Superintendent of Public Instruction determines that there has been a willful failure to make any report required by this article, the Superintendent of Public Instruction shall do both of the following:

(a) Notify the school district or the county office of education in which the willful failure has occurred of the determination.

(b) Make an assessment of not more than five hundred dollars ($500) against that school district or county office of education. This may be

accomplished by the deduction of the amount of the assessment from an apportionment made subsequent to the determination.

SEC. 19.5. Section 35294.7 of the Education Code is amended and renumbered to read:

32287. If the Superintendent of Public Instruction determines that there has been a willful failure to make any report required by this article, the superintendent shall do both of the following:

(a) Notify the school district or the county office of education in which the willful failure has occurred.

(b) Make an assessment of not more than two thousand dollars ($2,000) against that school district or county office of education. This may be accomplished by deducting an amount equal to the amount of the assessment from the school district's or county office of education's future apportionment.

SEC. 20. Section 35294.8 of the Education Code is amended and renumbered to read:

32288. (a) In order to ensure compliance with this article, each school shall forward its comprehensive school safety plan to the school district or county office of education for approval.

(b) (1) Before adopting its comprehensive school safety plan, the schoolsite council or school safety planning committee shall hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the school safety plan.

(2) The schoolsite council or school safety planning committee shall notify, in writing, the following persons and entities, if available, of the public meeting:

(A) The local mayor.

(B) A representative of the local school employee organization.

(C) A representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs.

(D) A representative of each teacher organization at the schoolsite.

(E) A representative of the student body government.

(F) All persons who have indicated they want to be notified.

(3) The schoolsite council or school safety planning committee is encouraged to notify, in writing, the following persons and entities, if available, of the public meeting:

(A) A representative of the local churches.

(B) Local civic leaders.

(C) Local business organizations.

(c) In order to ensure compliance with this article, each school district or county office of education shall annually notify the State Department of Education by October 15 of any schools that have not complied with Section 32281.

SEC. 21. Section 35294.9 of the Education Code is repealed.

SEC. 22. Article 5.3 (commencing with Section 32290) is added to Chapter 2.5 of Part 19 of the Education Code, to read:

Article 5.3. Safety Devices

32290. The partnership shall discuss with providers of telephone equipment and services, and shall acquire information regarding, the availability of no-cost or reduced-cost cellular telephones and services to be provided on a statewide basis to each public school teacher for use as a classroom safety device. Although the primary purpose of providing the cellular telephones is school safety, a teacher receiving a cellular telephone as a result of these discussions, shall be encouraged to use the cellular telephone for school related purposes other than school safety. These purposes would include purposes that further the smooth administration of general classroom and school functions, including, but not limited to, communicating with parents about a pupil's education, communication with pupils about classwork and homework assignments, and communicating with other teachers and school administrators about school operations generally. Thus, the discussions between the partnership and the providers shall include the availability of no-cost or reduced-cost services in consideration of the complete usage contemplated pursuant to this section. The partnership shall ensure that each school district, county office of education, schoolsite council, and school safety planning committee developing a school safety plan pursuant to Article 5 (commencing with Section 32280) is provided with information regarding the availability of the no-cost or reduced-cost cellular telephones and services for consideration in developing its plan.

SEC. 23. Section 35294.10 of the Education Code is amended to read:

35294.10. (a) It is the intent of the Legislature that all public schools with any combination of instructional settings from kindergarten to grade 7, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools. It is further the intent of the Legislature to fund and coordinate the programs and activities carried out pursuant to the Interagency School Safety Demonstration Act of 1985 (Chapter 2.5 (commencing with Section 32260)), relating to safe school model programs; Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19, relating to the development of school safety plans; and Article 6 (commencing with Section 32296) of Chapter 2.5 of Part 19, relating to school community policing, in a cooperative and interactive effort to promote school safety and violence prevention in the public schools.

(b) It is further the intent of the Legislature that the Superintendent of Public Instruction and the Attorney General shall utilize available resources to make every effort to coordinate activities and the distribution of resources to maximize their effective and efficient use in establishing and maintaining safe schools.

SEC. 24. Section 35294.11 of the Education Code is amended to read:

35294.11. (a) The School Safety and Violence Prevention Strategy Program is hereby established to be administered by the Superintendent of Public Instruction for the purpose of promoting school safety and violence prevention programs among children and youth in the public schools.

(b) The Superintendent of Public Instruction, in conjunction with the Attorney General, shall develop standards and guidelines for evaluating proposals, and shall award grants on a competitive basis, as authorized by this article, to schools and school districts serving any combination of instructional settings from kindergarten to grade 7, inclusive, that meet the following conditions:

(1) The school has developed a school safety plan as required by Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 21.

(2) The school demonstrates its ability to carry out a collaborative and coordinated approach for implementing a comprehensive school safety and violence prevention strategy.

(3) After initial eligibility has been determined, a process of random selection for grants awarded pursuant to this article shall be used that ensure that, at a minimum, all of the following criteria are met:

(A) Schools are selected from the northern, central, and southern areas of the state.

(B) Schools selected represent large, medium, and small sized numbers in their pupil populations.

(C) Schools are selected from urban, suburban, and rural areas.

SEC. 25. Section 35294.12 of the Education Code is amended to read:

35294.12. A school or school district that applies for funding pursuant to this article shall submit an application that includes, but is not limited to, all of the following:

(a) A school safety plan required by Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19.

(b) A school violence prevention strategy for improving and marshaling the resources set forth in the school safety plan to promote school safety and violence prevention programs among children and youth.

SEC. 26. Section 35294.13 of the Education Code is amended to read:

35294.13. The Superintendent of Public Instruction shall award grants under this article for one or more of the following purposes:

(a) Providing schools with personnel, including, but not limited to, school counselors, school social workers, school nurses, and school psychologists, who are specially trained in identifying and supporting at-risk children and youth where the applicant demonstrates that appropriate support activities are necessary and would be desirable in addressing identified problems, issues, and needs, including, but not limited to, classes pertaining to anger management and conflict resolution.

(b) Providing effective and accessible oncampus communication devices, where the applicant demonstrates that the use of these devices, beyond everyday, routine matters, is part of the school safety plan developed pursuant to Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19.

(c) Establishing an in-service training program for all school staff, designed to assist school staff in identifying at-risk children and youth, communicating effectively with those pupils, and appropriately referring those pupils for counseling.

(d) Establishing cooperative arrangements with local law enforcement agencies for appropriate school-community relationships.

(e) Proposals that allow school districts to respond to existing or subsequent research that establishes structural changes in the operation of schools, such as smaller schools or ''schools within schools.''

(f) Any other proposal that the applicant school or school district designs that demonstrates that the proposal would materially contribute to meeting the goals and objectives of current law in providing for safe schools and preventing violence among children and youth.

SEC. 27. Section 35294.21 of the Education Code is amended to read:

35294.21. (a) When a schoolsite council next reviews and updates its school safety plan pursuant to Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19 and to the extent it implements its plan, the schoolsite council is encouraged to recognize that there are these three essential components of a successful comprehensive strategic action program for preventing school violence, and it is further encouraged to consider incorporating each of them into its plan:

(1) Assuring each pupil a safe physical environment.

(2) Assuring each pupil a safe, respectful, accepting, and emotionally nurturing environment.

(3) Providing each pupil resiliency skills.

(b) To assure a safe physical environment, a schoolsite council is encouraged to consider including in its school safety plan all of the following:

(1) A no tolerance for violence policy and practice.

(2) An immediate effective response to violence plan and implementation.

(3) A no guns allowed policy.

(4) Disallow and discourage the possession of drugs.

(5) Provide for smaller schools.

(6) Ensure that all staff and pupils, including, but not limited to, pupils with disabilities, know how to report incidents of violence, discrimination, harassment, and abuse.

(c) To assure a safe, respectful, accepting, and emotionally nurturing environment, a schoolsite council is encouraged to consider incorporating strategies to achieve all of the following goals:

(1) A school that welcomes the whole child.

(2) A nurturing classroom environment.

(3) A discipline policy that includes teaching respect and constructive resolution of conflicts.

(4) A discipline policy that aims at restoration of mutual respect, relationships, and a sense of community that seeks reintegration of pupils who become alienated through conflict or misbehavior.

(5) Administrators, teachers, and classified employees who are prepared through preservice and inservice training to appreciate their critical capacities for constructively engaging pupils.

(6) Professional education staff who are sensitive to the needs of pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds, and pupils with disabilities.

(7) Parents who are invited and accepting to become meaningfully involved.

(8) More emotional support service personnel, including counselors.

(9) An adult coach for each pupil.

(10) No bullying.

(d) To provide each child resiliency skills, a schoolsite council is encouraged to consider incorporating strategies that will provide each pupil all of the following:

(1) Resiliency.

(2) Authentic self-esteem.

(3) Moral education.

(4) An environment free from harassment, discrimination, and violence on any of the bases enumerated in the prohibition of discrimination contained in Chapter 2 (commencing with Section 200) of Part 1.

(5) Anger management.

(6) Conflict resolution.

(7) Peer counseling.

(8) Peer mediation.

SEC. 28. Section 35294.22 of the Education Code is amended to read:

35294.22. (a) Before a school safety plan is approved pursuant to subdivision (a) of Section 32288, the school safety plan shall be presented at a regularly scheduled public meeting of the governing board of the school district or county office of education and the adoption of the school safety plan shall not be an item for consent at that meeting. The governing board of the school district or county office of education shall discuss both of the following:

(1) How the school safety plan addresses the needs of the school and pupils within that school.

(2) How the schoolsite council considered the three essential components provided pursuant to subdivision (a) of Section 35294.21 when writing the school safety plan.

(b) The governing board of the school district or county office of education is encouraged to notify, in writing, the persons and entities specified in paragraphs (2) and (3) of subdivision (b) of Section 32288, if available, of the public meeting required pursuant to this section.

SEC. 29. Section 51263 of the Education Code is amended to read:

51263. The State Department of Education shall make available information on model drug and alcohol abuse prevention education programs developed and funded pursuant to Article 2 (commencing with Section 11965) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, Chapter 7 (commencing with Section 13860) of Title 6 of Part 4 of the Penal Code, and other public and private sources.

SEC. 30. Section 51264 of the Education Code is amended to read:

51264. (a) The State Department of Education shall prepare and distribute to school districts and county offices of education guidelines for incorporating in-service training in gang violence and drug and alcohol abuse prevention for teachers, counselors, athletic directors, school board members, and other educational personnel into the staff development plans of all school districts and county offices of education.

(b) The department shall, upon request, assist school districts and county offices of education in developing comprehensive gang violence and drug and alcohol abuse prevention in-service training programs. The department's information and guidelines, to the maximum extent possible, shall encourage school districts and county offices of education to avoid duplication of effort by sharing resources, adapting or adopting model in-service training programs, developing joint and collaborative programs, and coordinating efforts with existing state staff development programs, county gang violence and drug and alcohol staff development programs, county health departments, county and city law enforcement agencies, and other public and private agencies providing health, drug,

alcohol, gang violence prevention, or other related services at the local level.

(c) The department shall assist school districts and county offices of education in qualifying for the receipt of federal and state funds to support their gang violence and drug and alcohol abuse prevention in-service training programs.

(d) Each school that chooses to utilize the provisions of this article related to in-service training in gang violence and drug and alcohol abuse prevention, is encouraged to develop a single plan to strengthen its gang violence and drug and alcohol abuse prevention efforts. If a school develops or has developed a school improvement plan pursuant to Article 2 (commencing with Section 52010) of Chapter 6 of Part 28, or a school safety plan pursuant to Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19, it is encouraged to incorporate into that plan, where appropriate, the gang violence and drug and alcohol prevention plan that it has developed.

(e) The department shall consult with the Office of Criminal Justice Planning regarding gang violence.

SEC. 31. Section 19.5 of this bill incorporates amendments to Section 35294.7 of the Education Code proposed by both this bill and AB 115. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 35294.7 of the Education Code, and (3) this bill is enacted after AB 115, in which case Section 19 of this bill shall not become operative.

CHAPTER 829

An act to add Chapter 22 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003.

SEC. 2. The Legislature finds and declares all of the following:

(a) Each operator of a commercial Web site or online service has an obligation to post privacy policies that inform consumers who are located in California of the Web site's or online service's information practices with regard to consumers' personally identifiable information and to abide by those policies.

(b) It is the intent of the Legislature to require each operator of a commercial Web site or online service to provide individual consumers residing in California who use or visit the commercial Web site or online service with notice of its privacy policies, thus improving the knowledge these individuals have as to whether personally identifiable information obtained by the commercial Web site through the Internet may be disclosed, sold, or shared.

(c) It is the intent of the Legislature that Internet service providers or similar entities shall have no obligations under this act related to personally identifiable information that they transmit or store at the request of third parties.

SEC. 3. Chapter 22 (commencing with Section 22575) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 22. INTERNET PRIVACY REQUIREMENTS

22575. (a) An operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service shall conspicuously post its privacy policy on its Web site, or in the case of an operator of an online service, make that policy available in accordance with paragraph (5) of subdivision (b) of Section 22578. An operator shall be in violation of this subdivision only if the operator fails to post its policy within 30 days after being notified of noncompliance.

(b) The privacy policy required by subdivision (a) shall do all of the following:

(1) Identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual consumers who use or visit its commercial Web site or online service and the categories of third-party persons or entities with whom the operator may share that personally identifiable information.

(2) If the operator maintains a process for an individual consumer who uses or visits its commercial Web site or online service to review and request changes to any of his or her personally identifiable information that is collected through the Web site or online service, provide a description of that process.

(3) Describe the process by which the operator notifies consumers who use or visit its commercial Web site or online service of material changes to the operator's privacy policy for that Web site or online service.

(4) Identify its effective date.

22576. An operator of a commercial Web site or online service that collects personally identifiable information through the Web site or

online service from individual consumers who use or visit the commercial Web site or online service and who reside in California shall be in violation of this section if the operator fails to comply with the provisions of Section 22575 or with the provisions of its posted privacy policy in either of the following ways:

(a) Knowingly and willfully.

(b) Negligently and materially.

22577. For the purposes of this chapter, the following definitions apply:

(a) The term ''personally identifiable information'' means individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form, including any of the following:

(1) A first and last name.

(2) A home or other physical address, including street name and name of a city or town.

(3) An e-mail address.

(4) A telephone number.

(5) A social security number.

(6) Any other identifier that permits the physical or online contacting of a specific individual.

(7) Information concerning a user that the Web site or online service collects online from the user and maintains in personally identifiable form in combination with an identifier described in this subdivision.

(b) The term ''conspicuously post'' with respect to a privacy policy shall include posting the privacy policy through any of the following:

(1) A Web page on which the actual privacy policy is posted if the Web page is the homepage or first significant page after entering the Web site.

(2) An icon that hyperlinks to a Web page on which the actual privacy policy is posted, if the icon is located on the homepage or the first significant page after entering the Web site, and if the icon contains the word ''privacy.'' The icon shall also use a color that contrasts with the background color of the Web page or is otherwise distinguishable.

(3) A text link that hyperlinks to a Web page on which the actual privacy policy is posted, if the text link is located on the homepage or first significant page after entering the Web site, and if the text link does one of the following:

(A) Includes the word ''privacy.''

(B) Is written in capital letters equal to or greater in size than the surrounding text.

(C) Is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size,

or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) Any other functional hyperlink that is so displayed that a reasonable person would notice it.

(5) In the case of an online service, any other reasonably accessible means of making the privacy policy available for consumers of the online service.

(c) The term ''operator'' means any person or entity that owns a Web site located on the Internet or an online service that collects and maintains personally identifiable information from a consumer residing in California who uses or visits the Web site or online service if the Web site or online service is operated for commercial purposes. It does not include any third party that operates, hosts, or manages, but does not own, a Web site or online service on the owner's behalf or by processing information on behalf of the owner.

(d) The term ''consumer'' means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

22578. It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the posting of a privacy policy on an Internet Web site.

22579. This chapter shall become operative on July 1, 2004.

CHAPTER 830

An act to amend Section 31640.5 of the Government Code, relating to county employees' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 31640.5 of the Government Code is amended to read:

31640.5. Where service for which a member receives credit, either prior to or during membership, is on a tenure which is temporary, seasonal, intermittent, or part time only, the member shall receive credit as continuous service for that proportion of the time he or she held the position as the time he or she actually was engaged in the performance

of the duties of the position bears to the time required to perform the same duties in a full-time position.

A "year of service" in the position shall be construed to mean the time during which the member has earned one full year of credit, calculated as provided in this section.

SEC. 2. The provisions of this act are declaratory of existing law.

CHAPTER 831

An act to amend Section 5406.5 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 5406.5 of the Labor Code is amended to read:

5406.5. In the case of the death of an asbestos worker or firefighter from asbestosis, the period within which proceedings may be commenced for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death.

CHAPTER 832

An act to add Section 486 to the Food and Agricultural Code, relating to cooperative agreements.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. The Legislature finds and declares that the County of Los Angeles is unique due to its large size, its international airport through which exotic pests from foreign countries may arrive, and the mild climate and mobile population that increases the year-round potential for pest or disease infestations. The Legislature further finds that these considerations make the stability of the workforce in Los Angeles County operating under cooperative agreements with the Department of Food and Agriculture of uniquely critical statewide

importance, and that Section 2 of this bill will enhance that stability greatly.

SEC. 2. Section 486 is added to the Food and Agricultural Code, to read:

486. Beginning in the 2004–05 fiscal year, the secretary may not enter into a cooperative agreement with a county of the first class for agricultural inspector services unless (1) all of the agricultural inspector aides performing work under the cooperative agreement are afforded protections as permanent employees under the county's civil service or other personnel system, and (2) the contract does not result in increased costs to the department above those from the cooperative agreement in the 2003–04 fiscal year.

CHAPTER 833

An act to add Chapter 7 (commencing with Section 99560) to Part 11 of Division 10 of the Public Utilities Code, relating to transit employer-employee relations.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Chapter 7 (commencing with Section 99560) is added to Part 11 of Division 10 of the Public Utilities Code, to read:

CHAPTER 7. TRANSIT EMPLOYER-EMPLOYEE RELATIONS

Article 1. General Provisions

99560. The Legislature hereby finds and declares that:

(a) The people of this state have a fundamental interest in the development of harmonious and cooperative labor relations between public transit districts and their employees.

(b) Public transit districts are not subject to a common statewide statutory scheme or an administrative agency that has jurisdiction over the conduct of employer-employee relations.

(c) Other public sector employees in the state have been granted the opportunity for collective bargaining through the adoption of the Meyers-Milias Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4

of Title 1 of the Government Code), the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code), and the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code), and it would be advantageous and desirable to expand the jurisdiction of the Public Employment Relations Board to cover the employees of public transit districts.

(d) The people and the public transit district employers each have a fundamental interest in the preservation and promotion of the responsibilities granted by the people of this state. Harmonious relations between each public transit district employer and its employees are necessary to that endeavor.

(e) It is the purpose of this chapter to provide the means by which relations between the Los Angeles County Metropolitan Transportation Authority and their supervisory employees may assure that the responsibilities and authorities granted to each transit district by statute are carried out in an atmosphere that permits the fullest participation by employees in the determination of conditions of employment which affect them. It is the intent of this chapter to accomplish this purpose by providing a uniform basis for recognizing the right of the employees of these transit districts to full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers and to select one employee organization as their exclusive representative for the purpose of meeting and conferring.

(f) It is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses, and to define and prohibit certain practices that are inimical to the public interest.

99560.1. As used in this chapter, the following words have the following meanings:

(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 3541 of the Education Code.

(c) ''Certified organization'' means an employee organization that has been certified by the board as the exclusive representative of the public transit district employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 99564).

(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 that contributes significantly to the development of those management positions.

(e) ''Employee'' or ''transit district employee'' means any supervisory employee of any public transit district employer except for confidential employees.

(f) (1) ''Employee organization'' means any organization of any kind in which public transit district employees participate and that exists for the purpose, in whole or in part, of dealing with public transit district employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees.

(2) ''Employee organization'' shall also include any person that an employee organization authorizes to act on its behalf.

(g) (1) ''Employer'' or ''transit district employer'' means the governing board of a public transit district, including any person acting as an agent of an employer.

(2) ''Employer'' or ''transit district employer'' shall also include the Public Transportation Services Corporation established by the Los Angeles County Metropolitan Transportation Authority, including any person acting as an agent of the employer.

(3) ''Employer'' or ''transit district employer'' shall also include any organizational unit established pursuant to paragraph (2) of subdivision (a) of Section 130051.11, including any person acting as an agent of the employer.

(4) ''Employer'' or ''transit district employer'' shall also include any transportation zone established pursuant to paragraph (8) of subdivision (a) of Section 130051.12, including any person acting as an agent of the employer.

(h) ''Employer representative'' means any person or persons authorized to act on 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 of the public transit district.

(*l*) ''Meet and confer'' means the performance of the mutual obligation of the public transit district employer and the exclusive representative of the public transit district 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 public transit district employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the transit district employer for concurrence. However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(m) ''Person'' means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(n) ''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 99564).

(o) ''Supervisory employee'' means any employee of a public transit district, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action if, in connection with these functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

99560.2. This chapter shall be known and may be referred to as the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act.

99560.3. This chapter shall only apply to supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

Article 2. Administration

99561. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(*l*) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

99561.1. Any person who shall willfully resist, prevent, impede, or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a

misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars ($1,000).

99561.2. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

99561.3. The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take affirmative action, that includes, but is not limited to, the reinstatement of employees with or without backpay, that will effectuate the policies of this chapter.

Article 3. Judicial Review

99562. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) 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 the case, may petition for a writ of extraordinary relief from the decision or order.

(c) The petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, 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 the filing period is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the 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, are conclusive. The provisions of 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 article, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to 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. The court shall not review the merits of the order.

Article 4. Rights, Obligations, Prohibitions, and Unfair Labor Practices

99563. Transit district employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring and shall have the right to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Transit district employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations subject to the organizational security provision permissible under this chapter.

99563.1. Notwithstanding the provisions of the Government Code or other laws or statutes, the transit district employer shall make deductions from wages and salaries of its employees upon receipt of authorization for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan or any other purpose for which deductions may be authorized by employees where the deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

99563.2. Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use transit district bulletin boards, mailboxes and other means of communication, and the right to use transit district facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

99563.3. A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released or reassigned time without loss of compensation when engaged in meeting and conferring and for the processing of grievances prior to the adoption of the initial memorandum of understanding. When a memorandum of understanding is in effect, released or reassigned time shall be in accordance with the memorandum.

99563.4. Transit district employers, or the representatives as they may designate, shall engage in meeting and conferring with the employee organization selected as exclusive representative of an appropriate unit on all matters within the scope of representation.

99563.5. (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.

(b) Notwithstanding subdivision (a), the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

99563.6. The duty to meet and confer in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date so there is adequate time for agreement to be reached, or for the resolution of impasse.

99563.7. It shall be unlawful for the transit district employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, ''employee'' includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and confer with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 99561, an employer shall not be prohibited

from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 99568).

99563.8. It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the transit district employer to violate Section 99563.7.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and confer with the transit district employer.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 99568).

Article 5. Employee Organizations: Representation, Recognition, Certification, and Decertification

99564. An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and conferring by filing a request with a transit district employer alleging that a majority of the employees in an appropriate unit wish to be represented by the organization and asking the employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions that constitute the unit claimed to be appropriate and shall certify that proof of majority support has been submitted to either the board or to a mutually agreed upon third party. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

99564.1. The transit district employer shall grant a request for recognition filed pursuant to Section 99564 except in one of the following circumstances:

(a) The employer reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit. In that case the employer shall notify the board which shall conduct a representation election pursuant to Section 99564.4 unless subdivision (c) or (d) applies.

(b) Another employee organization either files with the employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. If the claim is evidenced by the support that at least 30 percent of the members of the proposed unit, a question of representation shall be deemed to exist and the board shall conduct a representation

election pursuant to Section 99564.4, or if the claim is evidenced by the support of at least 10 percent of the members of the proposed unit, the board shall conduct inquiries and investigations or hold hearings that it deems necessary in order to decide the questions raised by the claim and may conduct a representation election pursuant to Section 99564.4. Evidence of that support shall be submitted to either the board or to a mutually agreed upon third party.

(c) There is currently in effect a lawful written memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding. However, if a memorandum of understanding has been in effect for three years or more, there shall be no restriction as to the time of filing the request.

(d) Within the previous 12 months either another employee organization has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, or a majority of the votes cast in a representation election held pursuant to Section 99564.4 were cast for ''no representation.''

99564.2. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by one of the following:

(a) An employee organization alleging that it has filed a request for recognition as an exclusive representative with an employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request.

(b) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 99564.1.

(c) An employee organization wishing to be certified by the board as the exclusive representative. The petition for certification as the exclusive representative in an appropriate unit shall include proof of a 30-percent showing of interest designating the organization as the exclusive representative of the employees.

99564.3. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether the employees wish to decertify an exclusive representative or to reconsider the appropriateness of a unit. The petition may allege that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative. The

petition shall include proof of a 30-percent showing of interest indicating support for another organization or lack of support for the incumbent exclusive representative.

99564.4. (a) Upon receipt of a petition filed pursuant to Section 99564.2, the board shall conduct inquiries and investigations or hold hearings as it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings. If the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 99564.1, it shall order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on the initial ballot the choice of ''no representation.'' If, at any election, no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever either of the following exists:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of the memorandum. However, if the memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition.

(2) Within the previous 12 months either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) were cast for ''no representation.''

99564.5. The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

Article 6. Unit Determination

99565. (a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the transit district employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the transit district employer and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (b) and (c) of Section 830.2 of the Penal Code.

Article 7. Organizational Security

99566. Subject to the limitations set forth in this chapter, organizational security shall be within the scope of representation.

99566.1. (a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a transit district

employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, and the signatures are obtained in one year. There shall not be more than one vote taken during the term of any collective bargaining agreement.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the transit district employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the transit district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of transit district employees against the transit district employer.

(f) The employer of a transit district employee shall provide the exclusive representative of an employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 475 U.S. 292.

99566.2. (a) Notwithstanding subdivision (i) of Section 99560.1, Section 99566, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment except as provided in subdivision (b).

(b) The employee may be required, in lieu of a service fee, to pay sums equal to the service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by the employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate funds, then to any such fund chosen by the employee. Either the employee organization or the transit district employer may require that proof of the payments be made on an annual basis to the transit district employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If the employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using that procedure.

99566.3. Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board 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 of its financial transactions in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of noncompliance with this section, any employee within the organization may petition the board for an order compelling compliance, or the board may issue a compliance order on its motion.

Article 8. Rights-Disputes Arbitration

99567. (a) An employer and an exclusive representative who enter into a written memorandum of understanding may agree to procedures for final and binding arbitration of disputes that may arise under the memorandum of understanding or between the parties.

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided in the memorandum of understanding.

(c) An arbitration award made pursuant to this section shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) The board shall submit a list of names of arbitrators to employers and employee organizations upon their mutual request. Nothing in this subdivision shall preclude the parties from mutually agreeing to some other means of selecting an arbitrator. The board shall also, if mutually requested to do so, designate an arbitrator to hear and decide the rights dispute.

Article 9. Impasse Procedures

99568. The impasse procedures contained in Chapter 9 (commencing with Section 1137) of Part 3 of Division 2 of the Labor Code shall govern any impasse proceedings under this chapter.

Article 10. Public Notice

99569. (a) All initial proposals of exclusive representatives and of transit district employers, that relate to matters within the scope of representation, shall be presented at a public meeting of the transit district employer and thereafter shall be public records.

(b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the transit district employer.

(c) After the public has had the opportunity to express itself, the transit district employer shall, at a meeting that is open to the public, adopt a proposal, including any changes to its initial proposal that the transit district employer deems appropriate based on the public's comments.

(d) New subjects of meeting and conferring arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on a new subject by the transit district employer, the vote on the subject by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section, that the public be informed of the issues that are being met and conferred upon and have full opportunity to express their views on the issues to the transit district employer, and to know of the positions of the transit district employer.

Article 11. Miscellaneous

99570. The following proceedings set forth in this section are exempt from the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), unless the parties mutually agree otherwise:

(a) Any meeting and conferring discussion between a transit district employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and conferring process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the transit district employer or between the transit district employer and its designated representatives for the purpose of discussing its position respecting meeting and conferring or

regarding any matter within the scope of representation or instructing its designated representatives.

99570.1. No memorandum of understanding shall contravene any federal or state law, including rules and regulations promulgated pursuant to such laws, prohibiting discrimination in employment.

99570.2. If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

99570.3. (a) Nothing in this chapter shall be construed to deprive employees of their rights pursuant to the Urban Mass Transportation Act of 1964 (49 U.S.C. Section 5301 et seq.) and the agreements entered into pursuant to Section 5333(b) of Title 49 of that act.

(b) Nothing in this chapter shall be construed to deprive employees of their rights pursuant Sections 130051.24 and 130110 of the Public Utilities Code.

99570.4. For employees of the Los Angeles Metropolitan Transportation Authority covered under this chapter, this chapter shall supersede subdivisions (a) to (c), inclusive, of Section 30750 and Sections 30751 and 30755.

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 834

An act to amend Sections 1771.5 and 1771.7 of the Labor Code, relating to public works.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1771.5 of the Labor Code is amended to read:

1771.5. (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages

or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, ''labor compliance program'' means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

SEC. 2. Section 1771.7 of the Labor Code is amended to read:

1771.7. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the ''awarding body'' is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial

Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

CHAPTER 835

An act to add Section 21039 to the Government Code, relating to public employees' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 21039 is added to the Government Code, to read:

21039. (a) Notwithstanding any other provision of law, a safety member, as defined in subdivision (b) of Section 20371, who has elected to receive credit for service by making contributions in installment payments and who retires or has retired due to industrial disability while making those payments, may elect to cancel the payments prospectively if the election to receive credit for service does not increase the member's allowance payable. The effective date of the member's election to cancel payments shall be the first day of the month following receipt of the election by the system. No refund of contributions paid in installments prior to the effective date of the member's election to cancel the payments shall be payable to a member or retired member as a result of an election made by a member pursuant to this section.

(b) A member's election pursuant to this section shall be void, and the installment payments shall resume, upon a member's reinstatement from retirement for industrial disability. The remaining balance due shall be recalculated to include interest during the industrial disability retirement period.

(c) Nothing in this section shall be construed to limit any right or benefit granted pursuant to Section 20776 or 21037, as amended by Senate Bill 268 of the 2003–04 Regular Session.

CHAPTER 836

An act to add Section 18941 to the Government Code, relating to civil service.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 18941 is added to the Government Code, to read:

18941. (a) For purposes of this section, ''Section 211'' means the board regulation restricting a dismissed employee from taking civil service examinations, provided for pursuant to Section 211 of Title 2 of the California Code of Regulations.

(b) The board shall do both of the following:

(1) Provide, by rule, for grant of a blanket waiver under Section 211 that will allow a dismissed employee who meets standards to be determined by the board to apply for any civil service examination, so that he or she will not need a separate waiver for each examination.

(2) Prepare a written notice that explains the effect of dismissal from state employment on eligibility to take civil service examinations, as stated in Section 211, and the process by which a dismissed employee can compete in a civil service examination, including any changes to that process required by this section.

CHAPTER 837

An act to add Section 21152.1 to the Public Resources Code, relating to environmental quality.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 21152.1 is added to the Public Resources Code, to read:

21152.1. (a) When a local agency determines that a project is not subject to this division pursuant to Section 21159.22, 21159.23, or 21159.24, and it approves or determines to carry out that project, the local agency or the person specified in subdivision (b) or (c) of Section 21065, shall file notice of the determination with the Office of Planning and Research.

(b) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days.

(c) Failure to file the notice required by this section does not affect the validity of a project.

(d) Nothing in this section affects the time limitations contained in Section 21167.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 838

An act to add Section 20909 to the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 20909 is added to the Government Code, to read:

20909. (a) A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system.

(b) A member may elect to receive this additional retirement service credit at any time prior to retirement by making the contributions as specified in Sections 21050 and 21052. A member may not elect additional retirement service credit under this section more than once.

(c) For purposes of this section, ''additional retirement service credit'' means time that does not qualify as public service, military service, leave of absence, or any other time recognized for service credit by the retirement system.

(d) Additional retirement service credit elected pursuant to this section may not be counted to meet the minimum qualifications for service or disability retirement or for health care benefits, or any other benefits based upon years of service credited to the member.

(e) This section only applies to the following members:

(1) A member while he or she is employed in state service at the time of the additional retirement service credit election.

(2) A member of the system defined in Section 20324.

(f) For purposes of this section, ''state service'' means service as defined in Section 20069.

CHAPTER 839

An act to amend Section 1773.1 of the Labor Code, relating to public works.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1773.1 of the Labor Code is amended to read:

1773.1. (a) Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, and apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions, and similar purposes, when the term ''per diem wages'' is used in this chapter or in any other statute applicable to public works.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment

to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages.

(1) No credit shall be granted for benefits required to be provided by other state or federal law.

(2) Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

(d) An employer may take a credit for employer payments specified in subdivision (b) even if contributions are not made, or costs are not paid, during the same pay period for which credits are taken, so long as the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved.

(1) The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and

extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

CHAPTER 840

An act to amend Sections 21541, 31781.1, and 31787 of the Government Code, relating to death benefits.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 21541 of the Government Code is amended to read:

21541. (a) The special death benefit consists of the following:

(1) An amount equal to and derived from the same source as the basic death benefit exclusive of the contributions from which the annuity provided under paragraph (4) is paid.

(2) An amount sufficient, when added to the amount provided under paragraph (1), to provide, when applied according to tables adopted by the board, a monthly death allowance equal to one-half of his or her final compensation in the membership category applicable to him or her at the time of the injury, or the onset of the disease, causing death, as adjusted pursuant to subdivision (b), which amount shall be payable to the surviving spouse to whom he or she was married either continuously for at least one year prior to death, or prior to sustaining the injury or disease resulting in death, as long as the surviving spouse lives; or, if there is no surviving spouse or if the spouse dies before all children of the deceased member attain the age of 22 years, to his or her children under the age of 22 years collectively until every child shall have died, married, or attained the age of 22 years. However, no child shall receive any part of the allowance after marrying or attaining the age of 22 years. The increases described in this section shall only apply to spouses of deceased members who would have been less than 50 years of age, if still living on January 1, 2001.

(3) During the lifetime of the surviving spouse, an additional percentage of the death benefit allowed by this section, exclusive of the annuity under paragraph (4), shall be paid to the spouse of a member who is killed in the performance of his or her duty or who dies as a result of

an accident or an injury caused by external violence or physical force, incurred in the performance of his or her duty, for each of his or her children during the lifetime of the child, or until the child marries or reaches the age of 22 years, as follows: for one child, 25 percent; for two children, 40 percent; and for three or more children, 50 percent.

(4) An annuity that is the actuarial equivalent, assuming monthly payments for life to the surviving spouse, of the deceased's accumulated additional contributions at the date of his or her death, plus his or her accumulated contributions at that date based on compensation earned in any membership category other than the category applicable to him or her at the time of the injury or the onset of the disease causing death.

(b) For purposes of this section only, the deceased member's final compensation shall be deemed to increase, and the death benefit under paragraph (2) of subdivision (a) shall be increased correspondingly, at any time and to the extent the compensation is increased for then-active members employed in the job classification and membership category that was applicable to the deceased member at the time of the injury, or the onset of the disease, causing death. The deceased member's final compensation shall be deemed to be subject to further increases hereunder only until the earlier of (1) the death of the surviving spouse or (2) the date that the deceased member would have attained the age of 50 years.

(c) Monthly allowances shall be adjusted annually for time commencing on the first day of September and effective with the monthly allowance regularly payable on the first day of the October beginning with October 1, 2001. The employer of the deceased member shall be responsible for reporting and certifying top range salary rates by the first day of July, beginning with July 1, 2001.

(d) If the surviving spouse does not have custody of the member's children, the additional amount payable pursuant to this section shall be payable to the person having custody of the children for each child during the lifetime of the child, or until the child marries or reaches the age of 22 years.

(e) The computation for time prior to entering the membership category applicable to the deceased at the time of the injury, or the onset of the disease, causing death shall be based on the compensation earnable by him or her in the position first held by him or her in that category.

(f) For purposes of this section:

(1) ''Child'' means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of his or her death.

(2) ''Spouse'' means a wife or husband.

(g) This section shall apply to all contracting agencies and to the employees of all contracting agencies.

(h) For purposes of Section 21313, the base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of the adjustment.

(i) The amount of the death benefit payable pursuant to this section on and after January 1, 2001, with respect to any member who died prior to that date, shall be recalculated on and after that date pursuant to subdivision (b).

SEC. 2. Section 31781.1 of the Government Code is amended to read:

31781.1. (a) If a member of a retirement system established in a county subject to the provisions of Section 31676.1 would have been entitled to retirement in the event of a non-service-connected disability, but dies as the result of an injury or illness prior to retirement, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided in Sections 31780 and 31781, an ''optional death allowance.''

(b) The allowance shall consist of a monthly payment equal to 60 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired by reason of non-service-connected disability as of the date of his or her death.

(c) If the surviving spouse elects to receive the ''optional death allowance'' the payments due for this allowance shall be retroactive to the date of the deceased member's death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the ''optional death allowance,'' and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the ''optional death allowance'' shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the allowance shall cease upon the child's death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in his or her judgment, is in the best interests of the surviving child or children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of these persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to each child of the member shall be paid to each child through the age of 21 if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, ''child'' means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of his or her death.

SEC. 3. Section 31787 of the Government Code is amended to read:

31787. (a) If a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of and in the course of the member's employment, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided for in Sections 31780 and 31781, an optional death allowance.

(b) The optional death allowance shall consist of a monthly payment equal to the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired by reason of a service-connected disability as of the date of his or her death.

(c) If the surviving spouse elects to receive the optional death allowance, the payments due for this allowance shall be retroactive to the date of the deceased member's death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the optional death allowance, and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the optional death allowance shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the allowance shall cease upon the child's death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in his or her judgment, is in the best interests of the surviving child or

children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of those persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provision of this section, the benefits otherwise payable to each child of the member shall be paid to each child through the age of 21 years if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, ''child'' means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of his or her death.

SEC. 4. This act shall apply retroactively to the survivors of a deceased person who dies or is killed in the line of duty on or after January 1, 2001.

CHAPTER 841

An act to amend Section 710.8 of the Unemployment Insurance Code, relating to the California State University, and making an appropriation therefor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 710.8 of the Unemployment Insurance Code is amended to read:

710.8. (a) (1) The Trustees of the California State University, as defined as an employer in Section 3562 of the Government Code, shall elect to become an employer subject to Part 2 (commencing with Section 2601) with respect to all employees who are part of an appropriate unit established pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, provided the election is the result of a negotiated agreement between the Trustees of the California State University and a recognized employee organization of the university, as those terms are defined in Section 3562 of the Government Code, or is approved through an election held by a

recognized employee organization of the university in accordance with the election procedures set forth in subdivision (d) of this section.

(2) The Trustees of the California State University may also elect to provide coverage to its management and confidential employees and to its employees who are not a part of an appropriate unit, provided that the election is not contingent upon coverage of other employees of the Trustees of the California State University.

(b) Upon filing of the election, the filing entity shall, upon approval by the director, become an employer subject to Part 2 (commencing with Section 2601) to the same extent as other employers, and services performed by its employees, including those with civil service or tenure positions, who are subject to an election under this section shall constitute employment subject to that part.

(c) Sections 986 and 2903 apply to an employer making an election pursuant to this section.

(d) (1) Upon an affirmative vote of the governing body of the employee organization, that governing body shall order that an election shall be conducted by secret ballot, placing on the ballot the question of whether the employees of that appropriate bargaining unit do or do not desire that the Trustees of the California State University shall become the employer of the employees of that appropriate bargaining unit for the purposes of being subject to Part 2 (commencing with Section 2601).

(2) The recognized employee organization of the California State University shall certify the results of the election on the basis of which ballot choice receives a majority of the valid votes cast. There shall be printed on the ballot two choices, one which specifies the desire to be covered by state disability insurance and one which specifies the desire to continue to be covered by nonindustrial disability insurance.

(3) The ballot shall present the questions in a manner that stipulates that, if the election determination is in favor of the employees' desire to be covered by state disability insurance, this determination is intended to supplant the nonindustrial disability insurance program provided for in Article 1.2 (commencing with Section 89529.15) of Chapter 5 of Part 55 of the Education Code, after two calendar quarters have elapsed following the effective date of the state disability insurance coverage.

SEC. 2. It is the intent of the Legislature that any and all startup costs incurred by the Controller's office in implementing Section 710.8 of the Unemployment Insurance Code, as amended by Section 1 of this act, should be paid from any savings realized by the General Fund as a result of the implementation of this act.

CHAPTER 842

An act to add Section 3073.3 to, and to add and repeal Section 3073.2 of the Labor Code, relating to apprenticeship.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 3073.2 is added to the Labor Code, to read:

3073.2. (a) The California Apprenticeship Council may adopt industry-specific training criteria for use by apprenticeship programs subject to the requirements of this chapter. The adoption of those criteria, as established following notice and a workshop pursuant to Section 212.01 of Title 8 of the California Code of Regulations is not subject to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(b) Audits conducted by the division pursuant to Section 3073.1 shall ensure that any applicable training criteria established pursuant to this section are followed.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 3073.3 is added to the Labor Code, to read:

3073.3. It is the intent of the Legislature that the Department of Industrial Relations will encourage greater participation for women and ethnic minorities in apprenticeship programs.

CHAPTER 843

An act to amend Sections 45207 and 88207 of, and to add Section 45120.2 to, the Education Code, relating to classified school employees.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 45120.2 is added to the Education Code, to read:

45120.2. (a) If the development or revision of a local plan for the education of individuals with exceptional needs pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, results in a classified

employee who is performing service for one employer being terminated, reassigned, or transferred, or becoming the employee of another employer because of the reorganization of special education programs, the employee shall retain the seniority acquired at his or her employment with the school district or county office of education from which he or she was terminated, reassigned, or transferred. If terminated, the employee retains the rights specified in Sections 45115, 45117, and 45119.

(b) The reassignment of an employee, transfer of an employee, or new employment of an employee caused by the reorganization of special education programs does not affect the seniority or classification that a classified employee already attained in any school district that undergoes the reorganization. The employee has the same status with respect to his or her seniority or classification, with the new employer, including time served as a probationary employee. The total number of years served as a classified employee with the former school district or county office shall be credited, year for year, for placement on the salary schedule of the new school district or county office.

(c) If a local plan for the education of individuals with exceptional needs is developed or revised pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, all classified employees shall be employed by a county office of education or an individual school district.

(d) A classified employee who is reassigned or transferred as a result of the reorganization of special education programs has priority, except as provided in subdivision (e), in being informed of and in filling classified positions in the classifications in which the employee was employed before the reassignment or transfer. This priority expires 24 months after the date of reassignment or transfer and may be waived by the employee during that time period.

(e) A classified employee who served in a special education program in a school district or county office and is terminated from his or her employment by that school district or county office pursuant to Section 45114 as a result of the reorganization of a special education program has first priority in being informed of and in filling vacant classified positions for which the employee is qualified or was employed, in the county office or school district that operates the reorganized special education program. Permanent employees have the first priority right to reappointment as provided in this section for 39 months from the date of termination. Probationary employees have the first priority right to reappointment as provided in this section for 24 months from the date of termination.

SEC. 2. Section 45207 of the Education Code is amended to read:

45207. (a) A probationary or permanent employee may, at his or her election, use any days of absence for illness or injury earned pursuant

to Section 45191 in cases of personal necessity, including any of the following:

(1) Death of a member of his or her immediate family when additional leave is required beyond that provided in Section 45194 and that provided, in addition thereto, as a right by the governing board.

(2) Accident, involving his or her person or property, or the person or property of a member of his or her immediate family.

(3) Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction.

(4) Other reasons that the governing board may prescribe.

(b) The governing board of each school district shall adopt rules and regulations requiring and prescribing the manner of proof of personal necessity for the purpose of this section. The adopted rules and regulations may not require an employee to secure advance permission for leave taken for the purposes specified in paragraphs (1) and (2) of subdivision (a). Earned leave in excess of seven days may not be used in any school year for the purposes enumerated in this section, except if either of the following conditions exist:

(1) A maximum number of days in excess of seven is specified for that purpose in an agreement between the exclusive representative of the employees and the school district.

(2) If there is no exclusive representative of the employees, the governing board of the school district, by resolution, adopts a policy allowing earned leave in excess of seven days to be used in any school year for the purposes enumerated in this section.

(c) Authorized necessity leave shall be deducted from sick leave earned under the exemption of Section 45191.

(d) ''Immediate family'' has the same meaning as in Section 45194.

(e) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) and to school districts that may be exempted from Section 45191.

SEC. 3. Section 88207 of the Education Code is amended to read:

88207. (a) A contract or regular employee may, at the employee's election, use any days of absence for illness or injury earned pursuant to Section 88191 in cases of personal necessity, including any of the following:

(1) Death of a member of the employee's immediate family when additional leave is required beyond that provided both in Section 88194 and as a right by the governing board.

(2) Accident involving the person or property of the employee or of a member of his or her immediate family.

(3) Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction.

(4) Any other reasons that the governing board may prescribe.

(b) The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of personal necessity for the purpose of this section. The adopted rules and regulations may not require an employee to secure advance permission for leave taken for the purposes specified in paragraphs (1) and (2) of subdivision (a). Earned leave in excess of seven days may not be used in any college year for the purposes enumerated in this section except if either of the following conditions exist:

(1) A maximum number of days in excess of seven is specified for that purpose in an agreement between the exclusive representative of the employees and the community college district.

(2) If there is no exclusive representative of the employees, the governing board of the community college district, by resolution, adopts a policy allowing earned leave in excess of seven days to be used in any school year for the purposes enumerated in this section.

(c) Authorized necessity leave shall be deducted from sick leave earned under the exemption of Section 88191.

(d) For purposes of this section, ''immediate family'' has the same meaning as in Section 88194.

(e) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) and to community college districts that may be exempted from Section 88191.

CHAPTER 844

An act to amend Sections 10200, 10201, and 10205 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) According to a November 1, 2001, report, issued by the California Research Bureau entitled ''California's Job Training, Employment and Vocational Education Programs,'' millions of California's working

adults need to upgrade their educational and work skills in order to secure employment at a living wage.

(b) More than 2.5 million California workers, or nearly one in five adults in the workplace, lack a high school diploma.

(c) Assisting workers in enhancing their skills and in qualifying for high paid employment is critical if the state is to maintain a competitive advantage in today's global economy.

(d) The Employment Training Panel, the state's major job training program for employed workers, funds a variety of workforce training services, including vocational training, industry-specific skills training, job related literacy training, and retraining of workers.

(e) According to a two-year study conducted in 1999 and 2000 by California State University, Northridge, Employment Training Panel-sponsored training increased worker earnings, reduced unemployment, increased growth of California companies, and stimulated economic expansion in the state. This study also found that firms participating in the panel's single employer contracts have increased wages by approximately 25 percent and experienced a 15-percent increase in job growth.

(f) The Employment Training Panel has established a Small Business Pilot Project designed to target companies who do not have access to the panel through traditional funding processes. The Small Business Pilot Project is designed to serve small firms.

(g) According to the panel's annual 2001–02 report, 18 percent of all retrainees and 65 percent of all new hires were employed by firms with 100 or fewer employees, and 36 percent of the panel's total funds were used to train workers in small businesses employing 100 or fewer workers.

(h) The Employment Training Panel is statutorily required to fund only certain projects, including projects that foster creation of high-wage, high-skilled jobs in a manufacturing industry and other industries threatened by out-of-state competition.

(i) The Los Angeles County Economic Development Corporation's Semiannual Economic Forecast and Industry Outlook for the five county Los Angeles region cited high growth in regional aerospace and defense industries as a result of increased federal defense spending and homeland security efforts. The corporation's report also cited significant competition from other states for federal aerospace and defense contracts.

SEC. 2. It is the intent of the Legislature to do all of the following:

(a) Enhance access to the funds and services of the panel for California firms employing 100 or fewer workers.

(b) Authorize the Employment Training Panel to initiate pilot demonstration projects to identify new strategies to increase small firms'

access to Employment Training Panel programs and services. Strategies may include, but not be limited to, recommendations for improved small business outreach and a streamlined process for application, administration, and monitoring of contracts funded by the Employment Training Panel.

(c) Require the Employment Training Panel to identify in its annual report, required by subdivision (a) of Section 10205 of the Unemployment Insurance Code, the pilot projects that were established in accordance with subdivision (b) and to describe the strategies that were identified through these projects to increase access by small businesses to Employment Training Panel training contracts.

SEC. 3. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, ''frontline worker'' means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

(1) Foster creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs in manufacturing and other industries that are threatened by out-of-state and global competition, including, but not limited to, those industries in which targeted training resources for California's small and medium-sized business suppliers will increase the state's competitiveness to secure federal, private sector, and other nonstate funds. Provide for retraining contracts in companies that make a monetary or in-kind contribution to the funded training enhancements.

(2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.

(3) Result in secure jobs for those who successfully complete training. All training shall be customized to the specific requirements of one or more employers or a discrete industry and shall include general skills that trainees can use in the future.

(4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the Workforce Investment Act of 1998, the Carl D. Perkins Vocational Education Act, CalWORKs, the Enterprise Zone Act, and the Stewart B. McKinney Homeless Assistance Act, the

California Community Colleges Economic Development Program, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

(b) The Employment Training Panel, in funding projects that meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:

(1) Result in the growth of the California economy by stimulating exports from the state, and the production of goods and services that would otherwise be imported from outside the state.

(2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.

(3) Develop workers with skills that prepare them for the challenges of a high performance workplace of the future.

(4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.

(5) Are jointly developed by business management and worker representatives.

(6) Develop career ladders for workers.

(7) Promote the retention and expansion of the state's manufacturing workforce.

(c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Workforce Investment Act of 1998, the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Technology, Trade, and Commerce Agency.

SEC. 4. Section 10201 of the Unemployment Insurance Code is amended to read:

10201. As used in this chapter:

(a) ''Department'' means the Employment Development Department.

(b) ''Employer'' or ''eligible employer'' means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, or any nonprofit organization which has elected an

alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3.

Any public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall be deemed to be an employer only for purposes of placement of new hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employers.

(c) ''Eligible participant'' means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and has established an unemployment insurance claim in this state, or has exhausted eligibility for unemployment insurance benefits from this state within the previous 24 months.

(2) Employed for a minimum of 90 days by his or her employer, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment.

(d) ''Executive director'' means the executive director appointed pursuant to Section 10202.

(e) ''Fund'' means the Employment Training Fund created by Section 1610.

(f) ''Job'' means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security. Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 50 percent, in the case of new hire training, or 60 percent, in the case of retraining, of the state or regional average hourly wage. However, in no case shall the employment result in earnings of less than 45 percent of the state average hourly wage for new hire training and 55 percent of the state average hourly wage for retraining. The panel may consider the dollar value of health benefits that are voluntarily paid for by an employer when computing earnings to meet the minimum wage requirements.

(g) ''New hire training'' means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.

(h) ''Panel'' means the Employment Training Panel created by Section 10202.

(i) ''Retraining'' means employment related skill and literacy training for persons who are employed and who meet the definition of paragraph (2) of subdivision (c) prior to commencement of training and will continue to be employed by the same employer for at least 90 days following completion of training.

(j) ''State average hourly wage'' means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours.

(k) ''Trainee'' means an eligible participant.

(*l*) ''Training agency'' means any private training entity or local educational agency.

SEC. 5. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The initial three-year plan shall be submitted to the Governor and the Legislature not later than January 1, 1994. The initial update of the plan shall be submitted not later than July 1, 1994, and annual updates of the plan thereafter shall be submitted not later than July 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses may experience in accessing panel programs and workforce training resources, including barriers that may exist within small businesses.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Develop a process by which local workforce investment boards may apply for marketing resources for the purpose of identifying local employers that have training needs that reflect the priorities of the panel. The panel may delegate its authority to approve contracts for training to local workforce investment boards, provided that no contract approved exceeds fifty thousand dollars ($50,000) per project without prior approval of the panel and all contracts meet the provisions of this chapter and are consistent with the annual priorities identified by the panel.

(g) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(h) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(i) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for

this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues.

(j) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(k) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Technology, Trade, and Commerce Agency, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(*l*) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Technology, Trade, and Commerce Agency.

(m) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(n) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer

supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(o) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 6. The Legislature finds and declares all of the following:

(a) As the President and Congress strive to strengthen the nation's capacities in aerospace and defense in order to support military and governmental response to war against terrorism and to enhance homeland security, the United States Department of Defense requires prime contractors to achieve a 20 percent to 30 percent cost reduction.

(b) Aerospace and defense prime contractors estimate that suppliers represent more than 50 percent of the cost of the prime contractor's final product.

(c) In order for California's prime contractors to remain competitive for federal aerospace and defense contract awards, resources will be needed to improve California's supplier base through improvements impacting the supplier's entire business enterprise, including its leadership, operations, and workforce skills.

(d) According to the California Small Manufacturers Association, in order for small manufacturers to achieve improvements through training, the company owners and leaders must learn to lead the changed organization. As more aerospace and defense manufacturing is outsourced, suppliers must assume additional responsibilities, including earlier and more involved participation in product development, management of inventory for customers, production of near-perfect quality products, and steady price reductions.

(e) It is the intent of the Legislature to request the Employment Training Panel to continue current efforts to assist aerospace and defense suppliers, through workforce training to achieve competitiveness objectives including, but not limited to, quality and process improvement, just-in-time manufacturing and product delivery, and cost reductions.

CHAPTER 845

An act to amend Section 125550 of, and to add Sections 99159 and 120523 to, the Public Utilities Code, and to add Section 27512 to the

Streets and Highways Code, relating to public transit district pension plans.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. The Legislature finds and declares:

(a) In general, public transit systems in California have evolved through the takeover and consolidation of private transit operations by legislatively created public transit agencies. In the process of this evolution, all or a portion of private transit system retirement plans have been replaced by the current public transit retirement systems.

(b) In recognition of the private sector origins of these public transit systems and to meet the collective bargaining obligations imposed upon local agencies by federal law, most of the enabling legislation enacted by the Legislature has required transit district labor-management relations and public transit pension plans to be administered by reference to and consistent with the federal Labor Management Relations Act, 1947 (29 U.S.C. Sec. 141 et seq.). That act requires that pension plans applicable to employees represented by labor organizations operate under strong standards of fiduciary responsibility, including the requirement that those plans be administered and managed by boards of trustees consisting of equal representation of labor and management (29 U.S.C. Sec. 186(c)(5)).

(c) In addition, in adopting Proposition 162, which amended Section 17 of Article XVI of the California Constitution, the voters established that the public policy of this state is that a public retirement and pension system shall be administered and its pension assets shall be managed by a retirement board that is independent of the public agency governing board.

(d) Therefore, in order to further the objectives of uniform administration of labor-management relations and independence of collectively bargained retirement and pension systems in the public transit industry, the Legislature deems it appropriate that uniform provisions for the administration and management of collectively bargained pension plans, based upon the private-sector model established in the federal Labor Management Relations Act, 1947, be applied to all transit districts or agencies established pursuant to Division 10 (commencing with Section 24501), Division 11 (commencing with Section 120000), and Division 11.5 (commencing with Section 125000) of the Public Utilities Code and Chapter 18 of Part 3 of Division 16 of the Streets and Highways Code.

SEC. 2. Section 99159 is added to the Public Utilities Code, to read:

99159. (a) Any retirement system established or maintained pursuant to this division for employees of a transit district who are members of a unit appropriate for collective bargaining shall be maintained pursuant to a collective bargaining agreement and this section.

(b) Notwithstanding any other provision of this division, the retirement system and the funds of the system shall be managed and administered by a retirement board composed of equal representation of labor and management. Any deadlock among the members of the board with respect to that management and administration shall be resolved in the manner specified in Section 302 of the federal Labor Management Relations Act, 1947 (29 U.S.C. Sec. 186(c)(5)).

(c) The duties and responsibilities of the retirement board shall be executed in accordance with Section 17 of Article XVI of the California Constitution.

(d) This section does not apply to any public transit district that has, pursuant to a collective bargaining agreement, provided membership for the district's represented employees in the Public Employees' Retirement System, a retirement system established pursuant to the County Employees Retirement Law of 1937, or a pension trust subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.) or any transit district where the membership of the governing board of the transit district is directly elected by the voters.

SEC. 3. Section 120523 is added to the Public Utilities Code, to read:

120523. (a) Any pension plan maintained by the board pursuant to this division for employees of the board who are members of a unit appropriate for collective bargaining shall be maintained pursuant to a collective bargaining agreement and this section.

(b) The pension plan and the funds of the plan shall be managed and administered by a retirement board composed of equal representation of labor and management. Any deadlock among the members of the board with respect to that management and administration shall be resolved in the manner specified in Section 302 of the federal Labor Management Relations Act, 1947 (29 U.S.C. Sec. 186(c)(5)).

(c) The duties and responsibilities of the retirement board shall be executed in accordance with Section 17 of Article XVI of the California Constitution.

(d) This section does not apply if the board has, pursuant to a collective bargaining agreement, provided membership for the board's represented employees in the Public Employees' Retirement System, a retirement system established pursuant to the County Employees Retirement Law of 1937, or a pension trust subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).

SEC. 4. Section 125550 of the Public Utilities Code is amended to read:

125550. (a) The adoption, terms, and conditions of a pension plan covering employees of the board in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between that organization and the board and shall be subject to this section.

(b) The pension plan and the funds of the plan shall be managed and administered by a retirement board composed of equal representation of labor and management. Any deadlock among the members of the board with respect to that management and administration shall be resolved in the manner specified in Section 302 of the federal Labor Management Relations Act, 1947 (29 U.S.C. Sec. 186(c)(5)).

(c) The duties and responsibilities of the retirement board shall be executed in accordance with Section 17 of Article XVI of the California Constitution.

(d) This section does not apply if the board has, pursuant to a collective bargaining agreement, provided membership for the board's represented employees in the Public Employees' Retirement System, a retirement system established pursuant to the County Employees Retirement Law of 1937, or a pension trust subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).

SEC. 5. Section 27512 is added to the Streets and Highways Code, to read:

27512. (a) The adoption, terms, and conditions of a pension plan covering employees of the district in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between that organization and the board and shall be subject to this section.

(b) The pension plan and the funds of the plan shall be managed and administered by a retirement board composed of equal representation of labor and management. Any deadlock among the members of the board with respect to that management and administration shall be resolved in the manner specified in Section 302 of the federal Labor Management Relations Act, 1947 (29 U.S.C. Sec. 186(c)(5)).

(c) The duties and responsibilities of the retirement board shall be executed in accordance with Section 17 of Article XVI of the California Constitution.

(d) This section does not apply if the district has, pursuant to a collective bargaining agreement, provided membership for the district's represented employees in the Public Employees' Retirement System, a retirement system established pursuant to the County Employees Retirement Law of 1937, or a pension trust subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.)

SEC. 6. This act may not become operative in any district in which the provisions of this act would result in a change in the number, term, and method of selection or removal of elected employee members and, pursuant to subdivision (f) of Section 17 of Article XVI of the California Constitution, would require a vote of the electors of the jurisdiction.

CHAPTER 846

An act to add Sections 89539.1 and 89539.2 to the Education Code, relating to the California State University.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 89539.1 is added to the Education Code, to read:

89539.1. An employee who has been served with notice of dismissal, suspension, or demotion for cause, or a representative designated by the employee, shall have the right to inspect any documents in the possession of, or under the control of, the trustees that are relevant to the action taken or that would constitute ''relevant evidence,'' as defined in Section 210 of the Evidence Code.

SEC. 2. Section 89539.2 is added to the Education Code, to read:

89539.2. (a) Any party claiming that his or her request for discovery pursuant to Section 89539.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as the respondent the party refusing or failing to comply with Section 89539.1. The petition shall state facts showing that the respondent party failed or refused to comply with Section 89539.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 89539.1, and the ground or grounds of the respondent's refusal so far as known to the petitioner.

(b) (1) The petition shall be served upon respondent party, and filed within 14 days after the respondent party first evidenced his or her failure or refusal to comply with Section 89539.1, or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law

judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The respondent shall have a right to file a written answer to the petition. Any answer shall be filed with the Hearing Office of the State Personnel Board and the petitioner within 15 days of service of the petition.

(3) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. In the event that a hearing is ordered, the decision of the administrative law judge shall be issued within 20 days of the closing of the hearing.

(4) A party aggrieved by the decision of the administrative law judge may, within 30 days of service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the trustees is located. The petition shall be served on the respondent party.

(c) If, from a reading of the petition, the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal delivery or certified mail, and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may, in its discretion, order the administrative proceeding stayed during the pendency of the proceeding, and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under Section 89539.1, or is privileged against disclosure under Section 89539.1, the court may order lodged with it matters that are provided in subdivision (b) of Section 915 of the Evidence Code, and shall examine the matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall, no later than 45 days after the filing of the petition, file its order denying or granting the petition. However, the court may, on its own motion, for good cause, extend the time an additional 45 days. The order of the court shall be in writing, setting forth the matters or parts the petitioner is entitled to discover under Section 89539.1. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, the order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) (1) The order of the superior court shall be final and, except for this subdivision, shall not be subject to review by appeal. A party aggrieved by the order, or any part thereof, may within 30 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside, or otherwise modify, its order.

(2) Where a review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus. However, the court of appeal may dissolve or modify the stay thereafter, if it is in the public interest to do so. Where the review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his or her attorney, without substantial justification, failed or refused to comply with Section 89539.1, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

CHAPTER 847

An act to amend Section 911.4 of, and to add Section 6252.6 to, the Government Code, to amend Section 1527.6 of the Health and Safety Code, and to add Sections 16000.1 and 16501.15 to the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. This act shall be known and may be cited as the Duty to Foster Children Reaffirmation Act.

SEC. 2. Section 911.4 of the Government Code is amended to read:

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

(c) In computing the one-year period under subdivision (b), the following shall apply:

(1) The time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted.

(2) The time shall not be counted during which the person is detained or adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if both of the following conditions exist:

(A) The person is in the custody and control of an agency of the public entity to which a claim is to be presented.

(B) The public entity or its agency having custody and control of the minor is required by statute or other law to make a report of injury, abuse, or neglect to either the juvenile court or the minor's attorney, and that entity or its agency fails to make this report within the time required by the statute or other enactment, with this time period to commence on the date on which the public entity or its agency becomes aware of the injury, neglect, or abuse. In circumstances where the public entity or its agency

makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report.

(3) The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

SEC. 3. Section 6252.6 is added to the Government Code, to read:

6252.6. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

SEC. 4. Section 1527.6 of the Health and Safety Code is amended to read:

1527.6. (a) Any claim against the fund shall be filed with the fund in accordance with claims procedures and on forms prescribed by the State Department of Social Services or its designated contract agency.

(b) Any claim against the fund filed by a foster parent or a third party shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim, subject to subdivision (a) of Section 352 of the Code of Civil Procedure as that section applies to a minor. If a claim is not submitted to the fund within the applicable time, there shall be no recourse against the fund.

(c) The department shall approve or reject a claim within 180 days after it is presented.

(d) No person may bring a civil action against a foster parent for which the fund is liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid, and damages in excess of the payment are claimed.

SEC. 5. Section 16000.1 is added to the Welfare and Institutions Code, to read:

16000.1. (a) The Legislature finds and declares all of the following:

(1) The state has a duty to care for and protect the children that the state places into foster care, and as a matter of public policy, the state assumes an obligation of the highest order to ensure the safety of children in foster care.

(2) A judicial order establishing jurisdiction over a child placed into foster care supplants or limits parental or previous adult authority.

(3) Nothing in this section is intended to change the balance of liability between the state and the counties as it existed prior to the decision of the California Court of Appeal in County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R. (2002)

102 Cal.App.4th 627, as established by the decision of the California Court of Appeal in Scott v. County of Los Angeles (1994) 27 Cal.App.4th 125. Furthermore, nothing in this section is intended to increase or decrease the liability of the state as it existed prior to the Terrell R. case.

(b) (1) It is the intent of the Legislature that nothing in the decision of the California Court of Appeal in County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R. (2002) 102 Cal.App.4th 627, shall be held to change the standards of liability and immunity for injuries to children in protective custody that existed prior to that decision.

(2) It is the intent of the Legislature to confirm the state's duty to comply with all requirements under Part B of Title IV of the Social Security Act (42 U.S.C. Sec. 620 et seq.) and Part E of Title IV of the Social Security Act (42 U.S.C. Sec. 670 et seq.) that are relevant to the protection and welfare of children in foster care.

SEC. 6. Section 16501.15 is added to the Welfare and Institutions Code, to read:

16501.15. As used in subdivisions (b) and (c) of Section 16501.1, a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

SEC. 7. The Legislature finds and declares that the addition of Section 16501.15 to the Welfare and Institutions Code made by Section 6 of this act is declaratory of existing law.

CHAPTER 848

An act to amend Section 20235 of the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 20235 of the Government Code is amended to read:

20235. (a) The board shall submit a review of this system's assets to the Legislature on a quarterly basis. The report shall also be made available to all contracting agencies. The report shall:

(1) Discuss this system's portfolio and contain the following information:

(A) Concentration, current holdings at cost and market value, of equities.

(B) Concentration, current holdings at cost and market value, of fixed income instruments.

(C) Current holdings at cost and market value of real estate equities.

(D) Current holdings at cost and market value of mortgages.

(E) Options and forward commitments.

(F) Cash and cash equivalents.

(2) Disclose the following information on the rate of return of the fund by type of asset:

(A) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(B) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(C) Summary of performance of an alternative theoretical portfolio containing all investments and performance of comparable universes and other indexes.

(b) Upon written request from a contracting agency that does not participate in a risk pool, the board shall submit additional quarterly reports to the contracting agency as described in this subdivision. For the first quarter of the fiscal year, the report shall be submitted within 120 days after the end of the quarter and shall contain the agency's beginning balance for the fiscal year. For the second and third quarters of the fiscal year, the report shall be submitted to the contracting agency within 90 days after the end of the quarter. For the fourth quarter of the fiscal year, the report shall be submitted within 180 days after the end of the quarter and shall contain the agency's balance as of the end of the fiscal year. The report shall include, but need not be limited to, the following:

(1) All contributions made to the system by the contracting agency and its employees. The contributions shall be reported as the amounts paid and the amounts due from the contracting agency for both employer contributions and employee contributions.

(2) All benefits paid by the system to members of the contracting agency and their survivors and beneficiaries, including payments on account of pension, death, and disability benefits, and withdrawals of contributions. The benefits shall be reported as the total monthly allowances paid to retirees, survivors, and beneficiaries; the amount of total refunds paid; and the amount of any other lump sums paid.

(3) An amount that represents any miscellaneous adjustments, including transfers in and out.

(4) That quarter's portion of the agency's estimated share of the system's administrative costs that shall be assessed at the end of the fiscal year.

(5) The rate of return for the system during the quarter as reported to the board by the investment committee.

(6) The estimated interest applied to the agency's account as determined by the system. For purposes of this paragraph, the ''estimated interest applied'' means the estimate of the annual net earnings, as defined in Section 20052, and is subject to adjustment at the end of the fiscal year based on the actual dollar-weighted amount of investment return that shall be credited to the agency's account for the fiscal year. The report for the fourth quarter of the fiscal year shall also include the actual dollar-weighted amount of investment return for the fiscal year that shall be credited to the contracting agency's account.

(c) Upon written request from a contracting agency that does participate in a risk pool, the board shall submit to the contracting agency quarterly reports that reflect the total contributions made to the system by agencies in the risk pool, the total benefits paid by the system with respect to the risk pool, the total estimated share of administrative costs for the risk pool, and the total estimated share of investment returns for the risk pool.

(d) A contracting agency requesting quarterly reports pursuant to subdivision (b) or (c) shall pay a fee, in an amount determined by the board, not to exceed one thousand five hundred dollars ($1,500) quarterly per agency while the manual process of collecting the information is in use.

(e) Any report received by a contracting agency pursuant to this section shall be made available by the agency to any employee organization that represents the agency's employees and that requests a copy of the report.

CHAPTER 849

An act to amend Section 27 of the Business and Professions Code, and to amend Sections 1741 and 1775 of the Labor Code, relating to labor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California

Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery Program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The Funeral Directors and Embalmers Program shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(c) ''Internet'' for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 1741 of the Labor Code is amended to read:

1741. (a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor or both. The assessment shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due and shall include the basis for the assessment. The assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and

any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

SEC. 3. Section 1775 of the Labor Code is amended to read:

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars ($10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars ($20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars ($30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

CHAPTER 850

An act to amend Section 20092 of the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 20092 of the Government Code is amended to read:

20092. Each employing agency that employs an elected member of the board and that employs a person to replace the member during attendance at meetings of the board, or meetings of committees or subcommittees of the board, or when serving as a panel member of this system, or when carrying out other powers or duties as may be approved by the board, shall be reimbursed from the retirement fund for the direct and reasonable costs incurred by employing a replacement. Reimbursement for the costs incurred in employing a replacement pursuant to this section shall be operative on February 1, 2003.

CHAPTER 851

An act to add Section 1771.9 to the Labor Code, relating to public works.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(1) Payment of the prevailing rate of per diem wages to workers employed on public works projects is necessary to attract the most skilled workers for those projects and to ensure that work of the highest quality is performed on those projects.

(2) Public works projects should never undermine the wage base in a community, and requiring that workers on public works projects are paid the prevailing rate of per diem wages ensures that wage base is not lowered.

(3) It is a matter of statewide concern that every public agency in California pay the prevailing rate of per diem wages to workers employed on public works projects undertaken by those public agencies.

(b) Therefore, it is the intent of the Legislature, in enacting Section 2 of this act, that every public agency in California pay the prevailing rate of per diem wages to workers employed on public works projects undertaken by that public agency.

SEC. 2. Section 1771.9 is added to the Labor Code, to read:

1771.9. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) is approved by the voters at the November 2, 2004, statewide general election.

(c) The Department of Industrial Relations' and the Labor and Workforce Development Agency's public works services provided to labor compliance programs, interested parties, and awarding bodies associated with bond funding projects, that are governed by the public works requirements of this chapter, are to be supported as costs of a state agency with responsibility for administration of the bond program, or costs of construction, under subdivisions (a) and (d) of Section 16727 of the Government Code. Public works services under this chapter include all of the following:

(1) Prevailing wage measurement and setting.

(2) Wage petitions and special determinations.

(3) Coverage advice and determinations training for and approval of, labor compliance programs' establishment and enforcement notices to withhold.

(4) Civil wage and penalty assessments.

(5) Hearings in response to contractor requests under subdivision (b) of Section 1171.6, Section 1742, and Section 1777.7.

CHAPTER 852

An act to amend Sections 31520.1 and 31520.5 of, and to add Section 31485.9 to the Government Code, relating to local public employees' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 31485.9 is added to the Government Code, to read:

31485.9. (a) Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, no resolution, ordinance, contract, or contract amendment under this chapter adopted on or after January 1, 2004, may provide any retirement benefits for some, but not all, general members of a county or district.

(b) No resolution, ordinance, contract, or contract amendment under this chapter adopted on or after January 1, 2004, may provide different retirement benefits for any subgroup of general members within a membership classification, including, but not limited to, bargaining units or unrepresented groups, unless benefits provided by statute for members hired on or after the date specified in the resolution are adopted by the county or district governing board, by resolution adopted by majority vote, pursuant to a memorandum of understanding made under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 2). All nonrepresented employees within similar job classifications as employees in a bargaining unit subject to a memorandum of understanding, or supervisors and managers thereof, shall be subject to the same formula for the calculation of retirement benefits applicable to the employees in the bargaining unit. No retirement contract amendment may be imposed by the employer in absence of a memorandum of understanding under the Meyers-Milias-Brown Act.

(c) This section does not preclude changing membership classification from one membership classification to another membership classification.

SEC. 2. Section 31520.1 of the Government Code is amended to read:

31520.1. In any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by those members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board may not serve beyond his or her term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under Section 31470.2 or 31470.4, or any other eligible safety member in a county if there is no eligible candidate from the groups under Sections 31470.2 and 31470.4, which is not represented by a board member who received the highest number of votes of all candidates in that group. If there is no eligible candidate there may not be an alternate member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh and alternate members shall serve for a term of two years beginning January 1, 1952, or the date on which a retirement system established by this chapter becomes operative, whichever is the later. The eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter, the terms of office of the elected and appointed members and alternate are three years.

The alternate member provided for by this section shall vote as a member of the board only if the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate member shall fill the vacancy until a successor qualifies. The alternate shall sit on the board in place of the seventh member if a member of the

same service is before the board for determination of his or her retirement.

The amendments to this section during the 1972 Regular Session do not affect the continuation on the board of retired members appointed by the board of supervisors until the expiration of the term for which they were appointed.

SEC. 3. Section 31520.5 of the Government Code is amended to read:

31520.5. (a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement may, by majority vote, appoint, from a list of nominees submitted by a qualified retired organization, an alternate retired member to the office of the eighth member, who shall serve until the expiration of the current term of the current eighth member. Thereafter, the alternate retired member shall be elected separately by the retired members of the association in the same manner and at the same time as the eighth member is elected. An organization shall be deemed to be a ''qualified retiree organization'' for purposes of this subdivision if a majority of the members of the organization are retired members of the system.

(b) The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy until a successor qualifies. The alternate retired member shall be entitled to the same compensation as the eighth member only if the alternate retired member is present and acting for the eighth member during the entire meeting.

(c) If this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate safety member may not sit and act for the eighth member.

CHAPTER 853

An act to amend Sections 8869.80 and 8869.84 of the Government Code, relating to state government.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 8869.80 of the Government Code is amended to read:

8869.80. The Legislature hereby finds and declares all of the following:

(a) The Tax Reform Act of 1986 (Public Law 99-514) establishes a unified volume ceiling on the aggregate amount of private activity bonds that can be issued in each state. The unified volume ceiling is the product of seventy-five dollars ($75) multiplied by the state population in 1987 and fifty dollars ($50) multiplied by the state population in each succeeding calendar year.

(b) The federal act requires each state to allocate its volume ceiling according to a specified formula unless a different procedure is established by Governor's proclamation or state legislation.

(c) Therefore, it is necessary to designate a state agency and create an allocation system to administer the state unified volume ceiling.

(d) A substantial public benefit is served by promoting housing for lower income families and individuals.

(e) A substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and individuals.

(f) A substantial public benefit is served by providing federal tax credits or reduced interest rate mortgages to assist teachers, principals, vice principals, assistant principals, and classified employees who are willing to serve in high priority schools to purchase a home.

SEC. 2. Section 8869.84 of the Government Code is amended to read:

8869.84. (a) The committee shall, as soon as is practicable after the start of each calendar year, determine and announce the state ceiling for the calendar year.

(b) The entire state ceiling for each calendar year is hereby allocated to the committee to further allocate to state and local agencies as provided in this chapter.

(c) The committee shall prepare application forms and announce procedures for receipt and review of applications from state and local agencies desiring to issue private activity bonds.

(d) The committee may at any time, before or after granting any allocations in any calendar year to any state agencies or local agencies, announce priorities or reservations of any part of the state ceiling not theretofore allocated either for certain categories of bonds or categories of issuers.

(e) The committee may require any issuer making an application to the committee or MBTCAC for allocation of a portion of the state ceiling

to make a deposit, as determined by the committee, of up to 1 percent of the portion requested. If an allocation is not given, the deposit shall be returned. If an allocation is given, the deposit shall be kept (in proportion to the amount of allocation given) until bonds are issued. Upon that issuance, the deposit shall be returned to the issuer in an amount equal to the product of (1) the amount of the deposit retained times (2) the ratio between the amount of bonds issued divided by the amount of allocation granted. If no bonds are issued prior to the expiration of the allocation, the deposit shall be kept, unless the committee determines there is good cause to return all or part of the deposit. Any portion of a deposit kept shall be deposited in the fund.

(f) The committee may transfer part of the state ceiling to the MBTCAC, to be used for qualified mortgage bonds and exempt facility bonds, as those terms are used in the Internal Revenue Code, for qualified residential rental projects, as those terms are used in the Internal Revenue Code, (together referred to as ''housing bonds''), with directions and conditions pursuant to which MBTCAC may allocate those amounts to issuers of housing bonds at both the state and local level. In carrying out these functions, MBTCAC shall act solely as directed or authorized by the committee. If the committee makes the transfer to MBTCAC authorized by this subdivision, the references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to the ''committee'' shall, for purposes of any housing bonds, be deemed to mean MBTCAC.

(g) (1) The committee may establish the Extra Credit Teacher Home Purchase Program to provide federal mortgage credit certificates and reduced interest rate loans funded by mortgage revenue bonds to eligible teachers, principals, vice principals, assistant principals, and classified employees, who agree to teach or provide administration or service in a high priority school. Priority for assistance shall be given to eligible teachers, principals, vice principals, and assistant principals.

(2) For purposes of this program, the following definitions shall apply:

(A) ''High priority school'' means a state K-12 public school that is ranked in the bottom half of the Academic Performance Index developed pursuant to subdivision (a) of Section 52052 of the Education Code. However, priority shall be given to schools that are ranked in the lowest three deciles.

(B) ''Classified employee'' means an employee of a school district, employed in a position not requiring certification qualifications.

(3) The committee may make reservations of a portion of future calendar year state ceiling limits for up to five future calendar years for that program. The committee may also make future allocations of the state ceiling for up to five years for any issuer under that program. Any future allocation made by the committee shall constitute an allocation of

the state ceiling for a future year specified by the committee and shall be deemed to have been made on the first day of the future year so specified. The committee may condition allocations under the Extra Credit Teacher Home Purchase Program on any terms and conditions that the committee deems necessary or appropriate, including, but not limited to, the execution of a contract between the teacher, principal, vice principal, assistant principal, or classified employee and the issuer whereby the teacher, principal, vice principal, assistant principal, or classified employee agrees to comply with the terms and conditions of the program. The contract may include, among other things, an agreement by the teacher, principal, vice principal, assistant principal, or classified employee to teach or provide administration or service in a high priority school for a minimum number of years, and provisions for enforcing the contract that the committee deems necessary or appropriate.

(4) If a teacher, principal, vice principal, assistant principal, or classified employee does not fulfill the requirements of a contract entered into pursuant to paragraph (3), the issuer of the mortgage credit certificate or mortgage revenue bond may recover as an assessment from the teacher, principal, vice principal, assistant principal, or classified employee a monetary amount equal to the lesser of (A) one-half of the teacher's, principal's, vice principal's, assistant principal's, or classified employee's net proceeds from the sale of the related residence or (B) the amount of monetary benefit conferred on the teacher, principal, vice principal, assistant principal, or classified employee as a result of the federal mortgage credit certificate or reduced interest rate loan funded by a mortgage revenue bond, offset by the amount of any federal recapture, as defined by Section 143(m) of the Internal Revenue Code. The assessment may be secured by a lien against the residence, which shall decline in amount over the term of the contract as the teacher, principal, vice principal, assistant principal, or classified employee fulfills the term of the contract, and which shall be collected at the time of sale of the residence. Any assessment collected pursuant to this paragraph shall be used for the issuer's costs in administering the Extra Credit Teacher Home Purchase Program. The issuers shall report annually to the committee the total amount of any assessments collected pursuant to this paragraph and how those assessments were used by the issuer.

(5) If the committee establishes the Extra Credit Teacher Home Purchase Program pursuant to this subdivision, the committee shall report annually to the Legislature the results of the program, including all of the following:

(A) The amount of state ceiling limits allocated to or reserved for the program.

(B) The agencies to which state ceiling limits were issued.

(C) The number of loans or mortgage credit certificates issued to teachers, principals, vice principals, assistant principals, and classified employees.

(D) The schools or school districts at which recipients of assistance are employed, aggregated by decile in which the schools rank on the Academic Performance Index and by the percentage of uncredentialed teachers employed at the schools.

(6) The committee shall not make any reservations of future calendar year state ceiling limits or future allocations of the state ceiling pursuant to this subdivision on or after January 1, 2004, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date. However, reservations and allocations made prior to that date shall remain valid.

CHAPTER 854

An act to amend Sections 2106, 2109, 2110, and 2111 of, to amend and renumber Section 2116 of, and to repeal Section 2106.5 of, the Fish and Game Code, relating to endangered species, and making an appropriation therefor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 2106 of the Fish and Game Code is amended to read:

2106. (a) The department may develop and implement a recovery strategy pilot program for coho salmon.

(b) The department shall seek private and federal funding for implementation of the coho salmon recovery strategy pilot program. No additional state funds may be expended for the implementation of the program until the Legislature specifically appropriates funds for that purpose.

SEC. 2. Section 2106.5 of the Fish and Game Code is repealed.

SEC. 3. Section 2109 of the Fish and Game Code is amended to read:

2109. A recovery strategy for a species shall contain all of the following information:

(a) An explanation of scientific knowledge and assumptions regarding the biology, habitat requirements, and threats to the existence of the species.

(b) An explanation of interim and long-term recovery goals. The interim goals shall be specifically stated. The long-term goals may be specifically stated if the department determines that adequate information exists to reasonably identify long-term goals; if not, the strategy may contain general long-term goals that will be clarified as the recovery strategy is updated pursuant to subdivision (g).

(c) A range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the activities it recommends.

(d) An estimate of the time and costs required to meet the interim recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting final recovery goals. These costs shall include direct and indirect costs and public and private costs.

(e) A description of actions and recommendations, including voluntary incentives and objective criteria for delisting and deregulation, if applicable, that will be needed to minimize the adverse social and economic impacts of implementation of the recovery strategy and a discussion of the range of recovery alternatives considered in the strategy.

(f) A description of the following elements necessary to achieve the goals of the recovery strategy:

(1) The availability and use of public lands for the conservation, protection, restoration, and enhancement of the species.

(2) Methods of private and public cooperation.

(3) Procedures and programs for notice, education, research, monitoring, and strategy modification.

(g) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy. If final recovery goals are not specifically stated, the strategy shall contain a timetable for an update of the plan to clarify the long-term goals.

(h) Objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery, including commercial use if appropriate, and downlisting or delisting, if applicable.

(i) An implementation schedule.

SEC. 4. Section 2110 of the Fish and Game Code is amended to read:

2110. If the department determines, based on the best scientific evidence available, that the recovery strategy should also contain specifications regarding allowable taking of the species and guidelines for consultation, the recommended recovery strategy shall also contain general policies to guide the department's issuance of a permit pursuant

to Section 2081. The general policies shall be consistent with the recommended recovery strategy.

SEC. 5. Section 2111 of the Fish and Game Code is amended to read:

2111. After the department submits the recovery strategy to the commission, the commission shall hold a public hearing to consider approval of the recovery strategy. The commission shall approve the recovery strategy if, considering all relevant evidence, the commission finds that the recovery strategy meets all of the following criteria:

(a) The recovery strategy would conserve, protect, restore, and enhance the species.

(b) The recovery strategy and implementation schedule are capable of being carried out in a scientifically, technologically, and economically reasonable manner.

(c) The recovery strategy is supported by the best available scientific data.

(d) The recovery strategy represents an equitable apportionment of both public and private and regulatory and nonregulatory obligations.

(e) The recovery strategy would recover a formerly commercially valuable species to a level of abundance that would permit commercial use of that species.

SEC. 6. Section 2116 of the Fish and Game Code as added by Chapter 974 of the Statutes of 1996 is amended and renumbered to read:

2115.5. This article shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2009, deletes or extends that date. However, this section does not apply to a recovery strategy that is approved or implemented pursuant to this article on or before January 1, 2009, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

CHAPTER 855

An act to amend Sections 20751, 20776, 21037, 21050, 21293, and 21294 of, and to add Sections 20751.5, 20910, and 21251.15 to, the Government Code, relating to public employees' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 20751 of the Government Code is amended to read:

20751. If a nonmember, as defined in Section 21291, withdraws accumulated contributions in accordance with Section 21292, the member may redeposit those contributions pursuant to this article.

SEC. 2. Section 20751.5 is added to the Government Code, to read:

20751.5. A member whose right to redeposit contributions has been awarded in part to a nonmember, pursuant to paragraph (3) of subdivision (c) of Section 21290, may elect to redeposit contributions for the same amount that the nonmember was entitled to redeposit, if the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. A member electing to redeposit contributions pursuant to this section shall make the redeposit pursuant to Section 20750.

SEC. 3. Section 20776 of the Government Code is amended to read:

20776. (a) If a basic death benefit becomes payable before the payment of the total amount the member elected to pay under any election with respect to normal contributions, arrears contributions, absences, or public service credit permitted under this part, the member's entire compensation, or the service upon which that total amount was based, as the case may be, shall be included in the computation of the portion of the death benefit that is provided in subdivision (b) of Section 21532, and the unpaid balance of the total amount may not be paid to this system, nor may it be included in the member's accumulated contributions that constitute a part of the basic death benefit.

(b) Any balance of any total amount remaining unpaid at the death of the member on account of whom a special death benefit is payable or at the retirement of a member for industrial disability may be subject to Section 21037 when payment of the balance would not increase the allowance payable. When the balance of the amount remaining unpaid would increase the allowance payable, the balance shall become due and payable immediately, except that the survivor of a member who died under circumstances under which a special death benefit is payable and who had authorized payroll deductions may elect to continue those deductions from the survivor allowance in lieu of the lump-sum payment otherwise required. If the balance is not paid, the portion of the unpaid amount representing contributions on compensation earned in the membership applicable to the member at the time of injury resulting in death or disability shall be deducted from the benefit otherwise payable and this system shall be discharged from any liability for any annuity or benefit with respect to any remainder of the unpaid contribution.

(c) Any balance of the total amount remaining unpaid at the time of retirement for service or ordinary disability, or at death, with respect to which a benefit is payable under Section 21546, may be subject to Section 21037 when payment of the balance would not increase the allowance payable. When the balance of the amount remaining unpaid would increase the allowance payable, the balance shall become due and payable immediately, except that the survivor of a member who died under circumstances under which a benefit under Section 21546 is payable and who had authorized payroll deductions may elect to continue those deductions from the survivor allowance in lieu of a lump-sum payment of the balance due. If the balance is not paid, the service credit included in the election shall be reduced proportionately and any service credit dependent on completion of payments eliminated for purposes of computing the allowance but not for purposes of determining entitlement to an allowance.

(d) Notwithstanding any provision of subdivision (b) or (c), a member who retires before payment of the total amount which he or she elected to pay, may elect to pay the balance due, or the total amount if no payroll deductions had been made prior to retirement, by deductions from his or her retirement allowance equal to those which the member authorized as payroll deductions. In that case, service credit included in the election may not be reduced, nor may any prior service dependent on completion of payments be eliminated for purposes of computing the allowance. Any balance of the total amount remaining unpaid upon the death of the member shall be treated in the same manner as unpaid balances are treated if a special death benefit is payable, except that the survivor of a retired member who had authorized deductions from his or her retirement allowance in accordance with this subdivision, and who is eligible for a monthly allowance, may elect to continue those deductions from the survivor's allowance in lieu of the lump-sum payment otherwise required.

(e) Interest paid with respect to normal contributions, arrears contributions, absences, or public service credit permitted under this part, prior to date of retirement or death of the member, shall be credited to the member's individual account. Interest paid after the date of retirement or death of the member shall be credited to the retirement fund pursuant to Section 20174.

SEC. 4. Section 20910 is added to the Government Code, to read:

20910. A member whose right to elect to receive service credit pursuant to Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) has been awarded in part to a nonmember, pursuant to paragraph (4) of subdivision (c) of Section 21290, may elect to receive service credit for the same amount and type of service credit that the nonmember is entitled to purchase, if the

nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. A member electing to receive service credit pursuant to this section shall make the contributions required under this chapter for the particular amount and type of service credit.

SEC. 5. Section 21037 of the Government Code is amended to read:

21037. Notwithstanding any other provision of law, the following shall apply:

(a) A member who has elected to receive credit for service by contributing in installments and who retires for disability on or after January 1, 2004, when the election for service credit does not increase the member's allowance payable, may elect to cancel the installments prospectively. The member's election may be received by the system no more than 30 days after the date on which the member's retirement for disability is approved. The effective date of the member's election shall be the effective date of the member's retirement for disability. No refund of contributions paid in installments prior to the effective date of the member's election may be payable to a member or retired member as a result of an election made by a member pursuant to this section.

(b) A member's election pursuant to this section shall be void, and installment payments shall resume, upon a member's reinstatement from retirement for disability. The remaining balance due shall be recalculated to include interest during the disability retirement period.

(c) On or after January 1, 2004, the survivor of a member who elected to receive credit for service by contributing in installments, when the survivor is eligible to receive an allowance subject to Section 21541, may elect to cancel the installments prospectively when the election for service credit does not increase the survivor's allowance payable. The survivor's election shall be received by the system no more than 30 days after the member's date of death. The effective date of the survivor's election shall be the member's date of death. No refund of contributions paid in installments prior to the member's date of death may be payable as a result of an election made by a survivor pursuant to this section.

(d) A survivor's election pursuant to this section shall be void, and installment payments shall resume, upon a determination that the death was not industrial, following payment of a temporary special death benefit allowance, provided that the survivor is then entitled to a monthly allowance under Section 21546, 21547, 21547.7, or 21548. The remaining balance due shall be recalculated to include interest during the temporary special death benefit period.

(e) A member who retired for disability prior to January 1, 2004, or the survivor of a deceased disability retiree who began receiving a postretirement death benefit allowance prior to January 1, 2004, or the survivor of a member who began receiving an allowance subject to

Section 21541 prior to January 1, 2004, may elect to cancel installments prospectively when the election for service credit does not increase the allowance payable. The effective date of the election shall be the date that the election is received by this system. No refund of contributions paid in installments prior to the effective date of the election may be payable pursuant to this section.

SEC. 6. Section 21050 of the Government Code is amended to read:

21050. (a) An election by a member to receive credit for service under this part, in addition to his or her current and prior service credit, shall be effective only if accompanied by a lump-sum payment or an authorization for payments, other than a lump-sum payment, in accordance with regulations of the board.

(b) If a member electing to receive credit for service under this part is authorized to pay for that service in installment payments beginning on or after January 1, 2004, the amount of the installment payments shall include an actuarial adjustment, as determined by the chief actuary, as necessary to take into account the provisions of Section 21037. The amount of the actuarial adjustment may not exceed one-half of 1 percent of the total installment payment.

SEC. 7. Section 21251.15 is added to the Government Code, to read:

21251.15. (a) Notwithstanding any other provision of this part, when a member's account has been divided pursuant to Section 21290, and the nonmember has not effected a refund of accumulated contributions pursuant to Section 21292 prior to the member's effective date of retirement, and the nonmember has sufficient credited service to retire for service, the retirement allowance payable to a member who retires on or after January 1, 2004, shall be equal to the difference between (1) the allowance that would have been payable to the member had the division of the account not occurred and (2) the allowance payable to the nonmember on either (A) the effective date of the nonmember's retirement, or (B) if the nonmember has not retired on or before the member's effective date of retirement, the date the nonmember would have attained the age of 50 years, for service subject to Section 21362.2, and the date the nonmember would have attained the age of 55 years, or the member's actual age if older than the age of 55 years on the effective date of the member's retirement, for all other service.

(b) If the nonmember retires prior to the effective date of the member's retirement, an actuarial adjustment shall also be made to the member's allowance to account for the benefits received by the nonmember spouse prior to the member's effective date of retirement.

(c) In no event may the member's retirement allowance payable under this section be less than the allowance that would otherwise be payable under this part.

SEC. 8. Section 21293 of the Government Code is amended to read:

21293. (a) The nonmember who is awarded a separate account may redeposit accumulated contributions previously refunded to the member in accordance with the determination of the court required by Section 21290.

(b) The nonmember may redeposit only those accumulated contributions that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions pursuant to Section 20750 or Section 20752.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to redeposit the share of the nonmember in the previously refunded accumulated contributions unless the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. However, any right to redeposit previously refunded accumulated contributions not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) If the nonmember elected to redeposit upon retirement and has subsequently died, prior to completing the redeposit, the board shall file a claim against the estate of the decedent to recover benefit payments that exceeded those for which payment was made.

SEC. 9. Section 21294 of the Government Code is amended to read:

21294. (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 21290.

(b) The nonmember may purchase only that service credit that the court, pursuant to Section 21290 has determined to be the community property interest of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest required by Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) of Chapter 11 and pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to purchase the community property interest of the nonmember of the service credit unless the nonmember

has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(f) If the nonmember elected to purchase service credits upon retirement and has subsequently died, prior to completing the purchase, the board shall file a claim against the estate of the deceased to recover benefit payments that exceeded those for which payment was made.

CHAPTER 856

An act to add Section 22212.5 to the Education Code, and to amend Section 20098 of the Government Code, relating to public employees' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Section 17 of Article XVI of the California Constitution provides that the ''retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.''

(b) In order to permit the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board to exercise their fiduciary responsibility pursuant to Section 17 of Article XVI of the California Constitution, the Department of Personnel Administration established certain senior executive positions and investment management positions at both retirement systems that were exempt from civil service, and subsequently delegated authority to the Board of Administration and the Teachers' Retirement Board to establish additional exempt positions and determine the compensation

paid to those employees pursuant to compensation policies established by the respective boards.

(c) The Court of Appeal for the Third District of California, in Westly v. Board of Administration (2003) 105 Cal.App.4th 1095, held that, notwithstanding Section 17 of Article XVI of the California Constitution, Article VII of the California Constitution limited the number of Public Employees' Retirement System positions that may be exempt from civil service to only one employee selected by the Board of Administration, and that compensation paid to employees was subject to the authority of the Department of Personnel Administration.

(d) The continued ability of the Board of Administration and the Teachers' Retirement Board to meet their fiduciary obligation to their members requires that they be able to attract and retain employees in key senior executive and investment management positions with compensation that is consistent with the compensation paid to employees in other public retirement and financial service organizations.

(e) The express purpose of this act is to enable the Board of Administration and the Teachers' Retirement Board to attract and retain key personnel by empowering those boards to establish both appropriate classifications within the civil service for its senior executive and investment management employees and the compensation paid to those employees, competitive with the compensation paid to employees in other retirement and financial service entities, consistent with the holding of Westly v. Board of Administration, and notwithstanding the provisions of the Government Code that provide the State Personnel Board and the Department of Personnel Administration that authority.

SEC. 2. Section 22212.5 is added to the Education Code, to read:

22212.5. (a) This section shall apply to the following positions in the system: chief executive officer, system actuary, chief investment officer, and other investment officers and portfolio managers whose positions are designated managerial pursuant to Section 18801.1 of the Government Code.

(b) Notwithstanding Sections 19816, 19825, and 19826 of the Government Code, the board shall fix the compensation for the positions specified in subdivision (a). In so doing, the board shall be guided by the principles contained in Sections 19826 and 19829 of the Government Code, consistent with its fiduciary responsibility to its members to recruit and retain highly qualified and effective employees for these positions.

(c) When a position specified in subdivision (a) is filled through a general civil service appointment, it shall be filled from an eligible list based on an examination that was held on an open basis, and tenure in those positions shall be subject to the provisions of Article 2

(commencing with Section 19590) of Chapter 7 of Part 2 of Division 5 of Title 2 of the Government Code. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

(d) An individual who held a position designated in subdivision (a) for less than five years may not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person, except the state, by making any formal or informal appearance before or by making any oral or written communication to the Teachers' Retirement Board, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

SEC. 3. Section 20098 of the Government Code is amended to read:

20098. (a) The board shall appoint and, notwithstanding Sections 19816, 19825 and 19826, shall fix the compensation of an executive officer, a chief actuary, a chief investment officer, and other investment officers and portfolio managers whose positions are designated managerial pursuant to Section 18801.1.

(b) The executive officer, deputy executive officers, and the assistant executive officers may administer oaths.

(c) When fixing the compensation for the positions specified in subdivision (a), the board shall be guided by the principles contained in Sections 19826 and 19829, consistent with its fiduciary responsibility to its members to recruit and retain highly qualified and effective employees for these positions.

(d) When a position specified in subdivision (a) is filled through a general civil service appointment, it shall be filled from an eligible list based on an examination that was held on an open basis, and tenure in the position shall be subject to the provisions of Article 2 (commencing with Section 19590) of Chapter 7 of Part 2 of Division 5 of Title 2. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

(e) An individual who held a position designated in subdivision (a) for less than five years may not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person, except the state, by making any formal or informal appearance before or any oral or written communication to the Public Employees' Retirement System, or any officer or employee

thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 857

An act to amend Section 99200 of the Education Code, relating to instructional strategies.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) A quality education requires that pupils meet content and skill standards in all subject areas.

(b) English learners and low-performing pupils have special needs for academic experiences across the curriculum.

(c) California teachers require discipline-area support in all subjects required for high school graduation.

(d) Subject matter projects in seven of the nine school subject areas: mathematics, science, language arts, history-social science, foreign language, health/physical education and the arts, have collaborated effectively to serve California teachers since 1988.

(e) The subject matter project is uniquely organized to integrate K-12 professional development efforts in all school subject areas.

(f) Seven of the nine subject matter projects currently operate with content and skill standards approved by the State Board of Education.

(g) Two academic fields (health/physical education and foreign language) are seeking content and skill standards approved from the State Board of Education.

(h) Therefore, it is the intent of the Legislature that:

(1) Funding support be continued for subject matter projects currently authorized by statute.

(2) Maintenance-level funding be provided for projects in academic fields that are seeking standards approval from the State Board of Education.

(3) The subject matter project institutional manager extend collaboration among the projects serving all seven school subject matter areas.

SEC. 2. Section 99200 of the Education Code is amended to read:

99200. (a) With funds appropriated therefor, and with the approval of the Concurrence Committee, the Regents of the University of California shall establish and maintain cooperative endeavors designed to accomplish the following:

(1) Develop and enhance teachers' subject matter and content knowledge in the subject matter areas specified in Section 99201.

(2) Develop and enhance teachers' instructional strategies to improve student learning and academic performance as measured against State Board of Education standards adopted pursuant to Section 60605 and, where applicable, to standards adopted pursuant to Section 60811.

(3) Provide teachers with instructional strategies for working with English learners.

(4) Provide teachers with access to and opportunity to examine current research that is demonstrably linked to improved student learning and achievement as measured by performance levels on state tests administered pursuant to Section 60605 or on English language development assessments developed, pursuant to Chapter 7 (commencing with Section 60810) of Part 33, for English language learners.

(5) Maintain subject-specific professional communities that create and encourage ongoing opportunities for teacher learning and research.

(6) Develop and deploy as teacher leaders, teachers with demonstrated levels of expertise in the classroom and certifiable levels of content knowledge.

(b) The duties of the Concurrence Committee shall include, but need not be limited to, all of the following:

(1) Ensuring that the statewide and local subject matter projects comply with requirements of this chapter.

(2) Developing rules and regulations for the statewide subject matter projects.

(3) Selecting a contractor for a four-year independent evaluation of the effectiveness of the subject matter projects.

(c) An independent evaluation of the effectiveness of the subject matter projects shall be performed by a contractor selected pursuant to paragraph (3) of subdivision (b), and shall be reported to the State Board of Education, the Governor, and the Legislature by February 1, 2006.

Preliminary results shall be reported annually beginning February 1, 2004. The evaluation shall include, but not be limited to:

(1) Documenting the impact of participation in the program on student achievement in the statewide tests administered pursuant to Section 60605.

(2) Measuring the results of research that examines the learning, knowledge, and educational materials developed by the statewide subject matter projects.

(3) Documenting the quantity, quality, cost-effectiveness, and inclusiveness of subject matter project programs.

(4) The impact of the subject matter projects on the performance levels of high-priority schools affiliated with the subject matter projects.

(d) Grants to establish local sites of statewide subject matter projects shall be available to institutions of higher education, county offices of education and school districts, or any combination thereof, with a subject matter proposal approved pursuant to this article. Once established, each subject matter project shall be administered by the University of California in cooperation with the Concurrence Committee. Local sites of statewide subject matter projects shall be distributed throughout the state so that elementary, secondary, and postsecondary school personnel located in rural, urban, and suburban areas may avail themselves of subject matter projects.

(e) The Concurrence Committee shall be composed of individuals who are affiliated with leadership, management, or instruction, in education or education policy entities and shall be selected as follows:

(1) One representative selected by the Regents of the University of California.

(2) One representative selected by the Board of Trustees of the California State University.

(3) Two representatives selected by the State Board of Education, at least one of whom has significant experience with direct classroom instruction.

(4) One representative selected by the Governor.

(5) One representative selected by the Commission on Teacher Credentialing.

(6) One representative selected by the Curriculum Development and Supplemental Materials Commission.

(7) One representative of the California Community Colleges selected by the Board of Governors of the California Community Colleges.

(8) One representative of an independent postsecondary institution selected by the Association of Independent California Colleges and Universities.

CHAPTER 858

An act to amend Section 12012.85 of, and to add Chapter 7.5 (commencing with Section 12710) to Part 2 of, the Government Code, relating to gambling, and making an appropriation therefor.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Pursuant to the tribal-state gaming compacts, only 28 tribal governments pay into the Indian Gaming Special Distribution Fund based on the number of gaming devices operated on September 1, 1999.

(b) A county system of grants, based on the proportionate share that those 28 tribal governments actually pay into the Indian Gaming Special Distribution Fund, is the most efficient and fair method of distribution.

(c) Those counties with tribal gaming from gaming tribes that do not contribute to the Indian Gaming Special Distribution Fund should be eligible to receive some funds from the Indian Gaming Special Distribution Fund.

(d) Tribal governments must participate in the process of identifying and funding mitigation of impacts from tribal gaming through the grant process.

SEC. 2. Section 12012.85 of the Government Code is amended to read:

12012.85. There is hereby created in the State Treasury a fund called the ''Indian Gaming Special Distribution Fund'' for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts. These moneys shall be available for appropriation by the Legislature for the following purposes:

(a) Grants, including any administrative costs, for programs designed to address gambling addiction.

(b) Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming.

(c) Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of tribal-state gaming compacts.

(d) Payment of shortfalls that may occur in the Indian Gaming Revenue Sharing Trust Fund. This shall be the priority use of moneys in the Indian Gaming Special Distribution Fund.

(e) Disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of tribal-state gaming compacts ratified pursuant to Chapter 874 of the Statutes of 1999. No more than 10 percent of the funds appropriated in the Budget Act of 2000 for implementation of tribal labor relations ordinances promulgated in accordance with those compacts shall be expended in the selection of the Tribal Labor Panel. The Department of Personnel Administration shall consult with and seek input from the parties prior to any expenditure for purposes of selecting the Tribal Labor Panel. Other than the cost of selecting the Tribal Labor Panel, there shall be no further disbursements until the Tribal Labor Panel, which is selected by mutual agreement of the parties, is in place.

(f) Any other purpose specified by law.

(g) Priority for funding from the Indian Gaming Special Distribution Fund is in the following descending order:

(1) An appropriation to the Indian Gaming Revenue Sharing Trust Fund in an aggregate amount sufficient to make payments of any shortfalls that may occur in the Indian Gaming Revenue Sharing Trust Fund.

(2) An appropriation to the Office of Problem and Pathological Gambling within the State Department of Alcohol and Drug Programs for problem gambling prevention programs.

(3) The amount appropriated in the annual Budget Act for allocation between the Division of Gambling Control and the California Gambling Control Commission for regulatory functions that directly relates to Indian gaming.

(4) An appropriation for the support of local government agencies impacted by tribal gaming.

SEC. 3. Chapter 7.5 (commencing with Section 12710) is added to Part 2 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 7.5. GRANTS OF INDIAN GAMING REVENUE TO LOCAL GOVERNMENT AGENCIES

12710. This chapter establishes the method of calculating the distribution of appropriations from the Indian Gaming Special Distribution Fund for grants to local government agencies impacted by tribal gaming.

12711. (a) It is the intent of the Legislature to establish a fair and proportionate system to award grants from the Indian Gaming Special Distribution Fund for the support of local government agencies impacted by tribal gaming. It is also the intent of the Legislature that priority for funding shall be given to local government agencies impacted by the tribal casinos that contribute to the Indian Gaming Special Distribution Fund.

(b) It is the intent of the Legislature that in the event that any compact between any tribe and the state takes effect on or after the effective date of this chapter, or that any compact between any tribe and the state that took effect on or before May 16, 2000, is renegotiated and reexecuted at any time after its initial effective date, money provided to the state by a tribe pursuant to the terms of these compacts shall be applied on a pro rata basis to the state costs for the regulation of gaming and for problem gambling prevention programs in the Office of Problem and Pathological Gambling within the State Department of Alcohol and Drug Programs.

(c) It is the intent of the Legislature that if any compact between any tribe and the state takes effect on or after the effective date of this chapter, or if any compact between any tribe and the state that took effect on or before May 16, 2000, is renegotiated and reexecuted at any time after its initial effective date, any revenue sharing provisions of that compact that requires distributions to nongaming or noncompact tribes shall result in a decrease in the amount that the Legislature appropriates pursuant to this chapter.

12712. As used in this chapter:

(a) ''County Tribal Casino Account'' means an account consisting of all moneys paid by tribes of that county into the Indian Gaming Special Distribution Fund after deduction of the amounts appropriated pursuant to the priorities specified in Section 12012.85.

(b) ''Individual Tribal Casino Accounts'' means an account for each individual tribal casino that has paid money into the Indian Gaming Special Distribution Fund. The individual tribal casino account shall be funded in proportion to the amount that the individual tribe has paid into the Indian Gaming Special Distribution Fund.

(c) ''Local jurisdiction'' means any city, county, or special district.

12713. The Department of Finance, in consultation with the California Gambling Control Commission, shall calculate the total revenue in the Indian Gaming Special Distribution Fund that will be available for the current budget year for local government agencies impacted by tribal gaming. The department shall include this information in the May budget revision.

12714. (a) A County Tribal Casino Account is hereby created in the treasury for each county that contains a tribal casino.

(b) The amount to be deposited into each eligible county's County Tribal Casino Account shall be calculated in the following way:

(1) (A) For counties that do not have gaming devices subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund, the total amount to be appropriated by the Legislature for grants to local government agencies impacted by tribal gaming shall be multiplied by 5 percent.

(B) The amount determined pursuant to subparagraph (A) shall be divided by the aggregate number of gaming devices located in those counties that do not have gaming devices subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund.

(C) The amount determined pursuant to subparagraph (B) shall be multiplied by the number of gaming devices located in each county for which an appropriation is being calculated that are not subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund.

(D) The amount determined pursuant to subparagraph (C) shall be deposited into the County Tribal Casino Account for the county for which the appropriation was calculated.

(2) (A) For counties that have gaming devices subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund, the total amount to be appropriated by the Legislature for grants to local government agencies impacted by tribal gaming shall be multiplied by 95 percent.

(B) The amount determined pursuant to subparagraph (A) shall be divided by the aggregate number of gaming devices located in those counties that have gaming devices subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund.

(C) The amount determined pursuant to subparagraph (B) shall be multiplied by the number of gaming devices located in each county for which an appropriation is being calculated that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund.

(D) The amount determined pursuant to subparagraph (C) shall be deposited into the County Tribal Casino Account for the county for which the appropriation was calculated.

12715. (a) The Controller, acting in consultation with the California Gambling Control Commission, shall divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account for each tribe that operates a casino within the county. These accounts shall be known as Individual Tribal Casino Accounts, and funds may be released from these accounts to make grants selected by an Indian Gaming Local

Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. Each Individual Tribal Casino Account shall be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund.

(b) (1) There is hereby created in each county in which Indian gaming is conducted an Indian Gaming Local Community Benefit Committee. The selection of all grants from each Individual Tribal Casino Account or County Tribal Casino Account shall be made by each county's Indian Gaming Local Community Benefit Committee. In selecting grants, the Indian Gaming Local Community Benefit Committee shall follow the priorities established in subdivision (g). This committee has the following additional responsibilities:

(A) Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.

(B) Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.

(C) Determining the appropriate amount for reimbursement from the aggregate county tribal account of the demonstrated costs incurred by the county for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent of the aggregate county tribal account in any given fiscal year.

(2) The Indian Gaming Local Community Benefit Committee shall be composed of seven representatives, consisting of the following:

(A) Two representatives from the county, selected by the county board of supervisors.

(B) Three elected representatives from cities located within four miles of a tribal casino in the county, selected by the county board of supervisors. In the event that there are no cities located within four miles of a tribal casino in the county, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county. When there are no cities within four miles of a tribal casino in the county, and when the Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes operating casinos in the county.

(C) Two representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in each county. When an Indian Gaming Local Community Benefit Committee acts on behalf of a county where no

tribes pay into the Indian Gaming Special Distribution Fund, the two representatives may be selected upon the recommendation of the tribes operating casinos in the county.

(c) Sixty percent of each individual tribal casino account shall be available for nexus grants on a yearly basis to cities and counties impacted by tribes that are paying into the Indian Gaming Special Distribution Fund, according to the four-part nexus test described in paragraph (1). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(1) A nexus test based on the geographical proximity of a local government jurisdiction to an individual tribal land upon which a tribal casino is located shall be used by each county's Indian Gaming Local Community Benefit Committee to determine relative priority for grants, using the following criteria:

(A) Whether the local government jurisdiction borders the tribal lands on all sides.

(B) Whether the local government jurisdiction partially borders tribal lands.

(C) Whether the local government jurisdiction maintains a highway, road, or other thoroughfare that is the predominant access route to a casino that is located within four miles.

(D) Whether all or a portion of the local government jurisdiction is located within four miles of a casino.

(2) Fifty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet all four of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (3) or (4).

(3) Thirty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet three of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (4).

(4) Twenty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet two of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified

in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (3).

(d) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are paying into the Indian Gaming Special Distribution Fund. These discretionary grants shall be made available to all local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(e) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are not paying into the Indian Gaming Special Distribution Fund. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c), and irrespective of whether the impacts presented are from a tribal casino that is not paying into the Indian Gaming Special Distribution Fund. Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and of these multiyear grants shall be accounted for in the grant process for each year.

(1) Grants awarded pursuant to this subdivision are limited to addressing service-oriented impacts and providing assistance with one-time large capital projects related to Indian gaming impacts.

(2) Grants shall be subject to the sponsorship of the tribe that operates the particular Indian gaming facility and the recommendations of the Indian Gaming Local Community Benefit Committee for that county.

(f) For each county that does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribution Fund, funds may be released from the county's County Tribal Casino Account to make grants selected by the county's Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to any particular tribal casino. These grants shall follow the priorities specified in subdivision (g).

(g) The following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts: law enforcement, fire services, emergency medical services, environmental impacts, water supplies, waste disposal, behavioral, health, planning and adjacent land

uses, public health, roads, recreation and youth programs, and child care programs.

(h) All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the tribe paying into the Indian Gaming Special Distribution Fund from whose individual tribal casino account the grant moneys are available for distribution. Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in subdivision (g). A grant may not be made for any purpose that would support or fund, directly or indirectly, any effort related to opposition or challenge to Indian gaming in the state, and, to the extent any awarded grant is utilized for any prohibited purpose by any local government, upon notice given to the county by any tribe from whose Individual Tribal Casino Account the awarded grant went toward that prohibited use, the grant shall terminate immediately and any moneys not yet used shall again be made available for qualified nexus grants.

(i) A local government jurisdiction that is a recipient of a grant from an Individual County Tribal Casino Account or a County Tribal Casino Account shall provide notice to the public, either through a slogan, signage, or other mechanism, which states that the local government project has received funding from the Indian Gaming Special Distribution Fund and which further identifies the particular Individual Tribal Casino Account from which the grant derives.

(j) (1) Each county's Indian Gaming Local Benefit Committee shall submit to the Controller a list of approved projects for funding from Individual Tribal Casino Accounts. Upon receipt of this list, the Controller shall release the funds directly to the local government entities for which a grant has been approved by the committee.

(2) Funds not allocated from an individual tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund.

12716. Each county which administers grants from the Indian Gaming Special Distribution Fund shall provide an annual report to the Legislature by April 1st of each year detailing the specific projects funded by all grants in their jurisdiction.

12717. The State Auditor shall conduct an audit every three years regarding the allocation and use of moneys from the Indian Gaming Special Distribution Fund by the recipient of the grant moneys. The State Auditor shall report its findings to the Legislature and to all other appropriate entities.

12718. This chapter 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. 4. The sum of twenty-five million dollars ($25,000,000) is hereby appropriated from the Indian Gaming Special Distribution Fund to the Controller for distribution to local government agencies impacted by tribal gaming pursuant to the provisions of Chapter 7.5 (commencing with Section 12710) of Part 2 of Division 3 of Title 2 of the Government Code.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 859

An act to amend Sections 22109.5, 22138.5, 22146, 22203.5, 22213, 22503, 22663, 22713, 22714, 22801, 22801.5, 22820, 22823, 22826, 22905, 23203, 23300, 24002, 24012, 24111, 24214, 24216.6, 24221, 24300, 24606, 24615, 24616, 24617, 24975, 25000.9, 25018.5, 25100, 25101, and 25940 of the Education Code, relating to state teachers' retirement.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 22109.5 of the Education Code is amended to read:

22109.5. ''Break in service,'' for purposes of determining a member's final compensation, means:

(a) With respect to service of a member employed as a full-time employee and service performed by a member employed as a part-time employee, any period of time covering a pay period during which a member is on an unpaid leave of absence or a pay period in which a member has not performed any creditable service.

(b) For a member who has been employed in a substitute position:

(1) And has a change in assignment during a school year to a full-time or part-time position, a break in service is determined on the same basis as for the full-time or part-time employment during the same school year.

(2) For less than 50 percent of their teaching career for which service is credited, a break in service is determined on the same basis as full-time employment.

(3) For more than 50 percent of their teaching career for which service is credited, a break in service is any period of time within a school year for which compensation is not paid and service is not credited.

(c) If a member commenced performing service at the beginning of a school term, July and August of the school year are not a break in service; however, if the member commenced performing service after the school term begins, the previous July and August are a break in service.

(d) Earnable salaries for a full pay period, but not beyond the effective date of retirement, shall be used in determining final compensation when the member performed service within that pay period.

SEC. 2. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) ''Full time'' means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, ''full time'' may not be less than the minimum standards specified in this section. Each collective bargaining agreement or employment agreement that applies to a member subject to the minimum standard specified in paragraph (5) or (6) of subdivision (c) shall specify the number of hours of creditable service that equal ''full time'' pursuant to this section, and shall make specific reference to this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators, except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per school year for all instructors employed on a part-time basis, except instructors specified in paragraph (6). If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per school year for all instructors employed in adult education programs. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 3. Section 22146 of the Education Code is amended to read:

22146. ''Member'' means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

(a) An active member is a member who is not retired or disabled and who earns creditable compensation during the school year.

(b) An inactive member is a member who is not retired or disabled and who has not earned creditable compensation during the current or preceding school year.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

SEC. 4. Section 22203.5 of the Education Code is amended to read:

22203.5. (a) All investment transaction decisions made during a closed session, pursuant to paragraph (16) of subdivision (c) of Section 11126 of the Government Code, shall be by rollcall vote entered into the minutes of that meeting.

(b) The board, within 12 months of the close of an investment transaction or the transfer of system assets for an investment transaction, whichever occurs first, shall disclose and report the investment at a public meeting.

SEC. 5. Section 22213 of the Education Code is amended to read:

22213. The board shall regulate the duties of employers, employing agencies, and other public authorities, imposed upon them by this part, and shall require reports from employers, employing agencies, and other public authorities, as it deems advisable in connection with the performance of its duties.

SEC. 6. Section 22503 of the Education Code is amended to read:

22503. (a) Any person employed to perform creditable service as a substitute employee who is not already a member of the Defined Benefit Program is a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section does not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section is deemed to have become operative on July 1, 1996.

SEC. 7. Section 22663 of the Education Code is amended to read:

22663. The nonmember spouse who is awarded a separate account under this part has the right to purchase additional service credit in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may purchase only the service credit that the court, pursuant to Section 22652, has determined to be the community property interest of the nonmember spouse.

(b) The nonmember spouse shall inform the system in writing of his or her intent to purchase additional service credit within 180 days after the date the judgment or court order addressing the right of the nonmember spouse to purchase additional service credit is entered. The nonmember spouse shall elect to purchase additional service credit on a form provided by the system within 30 days after the system mails an election form and billing.

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement under this part, all contributions with respect to the additional service at the contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

(1) (A) The nonmember spouse shall purchase additional service credit by paying the required contributions and interest in one lump sum, or in not more than 120 monthly installments, provided that no installment, except the final installment, is less than twenty-five dollars ($25). Regular interest shall be charged on the monthly, unpaid balance if the nonmember spouse pays in installments.

(B) If any payment due, because of the election, is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(2) The contributions shall be based on the member's compensation earnable in the most recent school year during which the member was employed, preceding the date of separation established by the court pursuant to Section 22652.

(3) All payments of contributions and interest shall be received by the system before the effective date of the retirement of the nonmember.

(d) The nonmember spouse does not have a right to purchase additional service credit under this part after the effective date of a refund of the accumulated retirement contributions in the separate account of the nonmember spouse.

(e) The member does not have a right to purchase the community property interest of the nonmember spouse of additional service credit under this part whether or not the nonmember spouse elects to purchase the additional service credit. However, any additional service credit eligible for purchase that is not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 8. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow

an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but may not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and may be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed on a full-time basis to perform creditable service subject to coverage under the Defined Benefit Program and have a minimum of 10 years of credited service, including five years of credited service for full-time employment immediately preceding the reduction in workload.

(3) The member may not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals, other approved leaves of absence, and unpaid absences from the performance of creditable service for personal reasons do not constitute a break in service. For purposes of this subdivision, the period of time during which a member is retired for service shall constitute a break in service and a member who reinstates from retirement shall be required to be employed on a full-time basis to perform creditable service for at least five school years immediately preceding the reduction in workload.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations may not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the time the employer requires for full-time employment in accordance with Section 22138.5 pursuant to the member's contract of employment during his or her last school year of full-time employment preceding the reduction in workload.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer, in conjunction with the administrative staff of the State Teachers' Retirement Plan and the Public Employees' Retirement

System, shall verify the member's eligibility for the reduced workload program.

(d) For each school year the member's workload is reduced pursuant to this section, the member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed if the member had performed creditable service on a full-time basis and if that service was subject to coverage under the Defined Benefit Program.

(e) For each school year the member's workload is reduced pursuant to this section, the employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member if the member had performed creditable service on a full-time basis and if that service was subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 9. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action taken prior to January 1, 1999, determines, pursuant to Section 44929 or 87488, that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will either result in a net savings to the district or county office of education, result in a reduction of the number of certificated employees or academic employees as a result of declining enrollment, or result in the retention of certificated employees who are credentialed to teach in, or faculty who are qualified to teach in, teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the

member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner, and time period not to exceed four years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in any of the following:

(A) A net savings to the district.

(B) A reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5.

(C) The retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A district that qualifies under subparagraph (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in any of the following:

(A) A net savings to the county office of education.

(B) A reduction of the number of certificated employees as a result of declining enrollment.

(C) The retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in any of the following:

(A) A net savings to the district.

(B) A reduction in the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701.

(C) The retention of faculty who are qualified to teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under subparagraph (B) of paragraph (1) of subdivision (b) of this section shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

(3) The chancellor may request reimbursement from the community college for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) This section does not apply to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 10. Section 22801 of the Education Code is amended to read:

22801. (a) A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions

with respect to that service at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments, not to exceed ten years. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(b) If the member is employed to perform creditable service subject to coverage by the Defined Benefit Program at the time of the election, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(c) If the member is not employed to perform creditable service subject to coverage by the Defined Benefit Program at the time of the election, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(d) The employer may pay the amount required as employer contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803.

(e) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) Regular interest shall be charged on all contributions from the end of the school year on which the contributions were based to the date of payment.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest may not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable.

SEC. 11. Section 22801.5 of the Education Code is amended to read:

22801.5. (a) A member who elects pursuant to Section 22508.6 to have his or her state service subject to coverage by the Defined Benefit Program shall receive additional service credit for the time spent subject to coverage by the Public Employees' Retirement System between July 1, 1991, and the effective date of the election.

(b) A member described in subdivision (a) shall pay all contributions with respect to his or her state service as a member of the Public Employees' Retirement System at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of the election. Contributions shall be made in a lump sum or in not more than 120 monthly installments, not to exceed ten years. Payment shall be made or shall commence within 120 days after the date of the election. No installment, except the final installment, shall be less than twenty-five dollars ($25). The member may not be credited with any service pursuant to this section until the contributions have been paid in full.

(c) If the member is employed to perform creditable service at the time of the election, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(d) If the member is not employed to perform creditable service at the time of the election, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(e) The total amount of contributions due from the member under subdivision (b) shall be reduced by the amount received from the Public Employees' Retirement System pursuant to Section 20309.5 of the Government Code. Under no circumstances may the assets received from the Public Employees' Retirement System, pursuant to that section, be allocated or awarded to individual members or their spouses or beneficiaries.

SEC. 12. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. The member may not receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit under the Defined Benefit Program pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under the Defined Benefit Program pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Compensation for out-of-state service may not be used in determining the highest average annual compensation earnable when calculating final compensation.

(e) The service credit purchased under this section may not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 13. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment, in effect at the time of election.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member or beneficiary of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member or beneficiary may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary may receive any adjustment in the appropriate allowance due because of that payment.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments, not to exceed ten years. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 14. Section 22826 of the Education Code is amended to read:

22826. (a) A member may elect to receive up to five years of credit for nonqualified service provided the member is vested in the Defined Benefit Program as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan with respect to the Defined Benefit Program.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments, not to exceed ten years. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 15. Section 22905 of the Education Code, as amended by Section 8 of Chapter 375 of the Statutes of 2002, is amended to read:

22905. (a) Member contributions pursuant to Section 22901, employer contributions pursuant to Section 22903 or 22904, and member contributions made by an employer pursuant to Section 22909 shall be credited to the member's individual account under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable pursuant to the provisions of this part.

(b) Member and employer contributions on a member's compensation under the following circumstances shall be credited to the member's Defined Benefit Supplement account:

(1) Compensation for creditable service that exceeds one year in a school year.

(2) Compensation that is consistent with subdivision (b) of Section 22119.2.

(3) Compensation that is payable for a specified number of times as limited by law, a collective bargaining agreement, or an employment agreement.

(c) A member may not make voluntary pretax or posttax contributions under the Defined Benefit Supplement Program, except as provided in subdivision (d), nor may a member redeposit amounts previously distributed based on the balance in the member's Defined Benefit Supplement account.

(d) Member and employer contributions pursuant to paragraph (1) of subdivision (b) under the Defined Benefit Supplement Program shall be credited to the accounts of members as of July 1 each year following a determination by the system under the provisions of this part that those contributions should be credited to the Defined Benefit Supplement Program. Any other contributions under the Defined Benefit Supplement Program pursuant to paragraph (2) or (3) of subdivision (b), shall be credited to the individual account of the member upon receipt by the system. Contributions to a member's Defined Benefit Supplement account shall be identified separately from the member's contributions credited under the Defined Benefit Program.

(e) The provisions of this section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 16. Section 23203 of the Education Code is amended to read:

23203. (a) A member who elects to redeposit refunded accumulated retirement contributions shall pay, prior to retirement, all contributions and interest as determined under Section 23200.

(b) If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment.

(c) Redeposit of refunded accumulated retirement contributions shall be made in one sum, or in not more than 120 monthly installments, not to exceed ten years, provided that no installment, except the final installment, is less than twenty-five dollars ($25).

SEC. 17. Section 23300 of the Education Code is amended to read:

23300. (a) A member of the Defined Benefit Program may designate a beneficiary to receive benefits payable under this part upon the member's death. A beneficiary designation may not be made in derogation of a community property interest of a nonmember spouse, as defined by Section 25000.9, with respect to service or contributions credited under this part, unless the nonmember spouse has previously

obtained an alternative order pursuant to Section 2610 of the Family Code.

(b) A member's beneficiary designation for benefits payable under the Defined Benefit Program, including a designation made pursuant to Section 24300, shall also apply to benefits payable under the Defined Benefit Supplement Program. A beneficiary designation shall be in writing on a form prescribed by the system, executed by the member, and witnessed by two witnesses who are not designated as a beneficiary for benefits payable under either the Defined Benefit Program or the Defined Benefit Supplement Program.

(c) A beneficiary designation may not be valid unless it is received in the office of the system in Sacramento prior to the member's death.

(d) A member may change or revoke a beneficiary designation at any time by making a new designation pursuant to this section.

(e) This section may not be applicable to the designation of an option beneficiary or an annuity beneficiary under this part.

(f) An option beneficiary may designate a death beneficiary who would, upon the death of the option beneficiary, be entitled to receive the option beneficiary's accrued monthly allowance.

SEC. 18. Section 24002 of the Education Code is amended to read:

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application under this part by the member, the member's guardian or conservator, or the member's employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of service and the incapacity has been continuous from the last day of actual performance of service for which compensation is payable to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of service, and within four months after the last day of actual performance of service for which compensation is payable to the member, or within 12 months of that date if the member is on an employer-approved leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment subject to coverage under the Defined Benefit Program, if the application was not made under subdivision (b) and was not made more than four months after the last day of actual performance of service for which compensation is payable to the member.

(e) A member with a dependent child, who becomes disabled prior to normal retirement age, and whose sick leave will extend beyond normal

retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if the application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in the Defined Benefit Program commenced and which remains substantially unchanged at the time of application.

SEC. 19. Section 24012 of the Education Code is amended to read:

24012. (a) A member who is receiving a disability allowance pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore the member's ability to perform service in the member's former position of employment or a comparable level position shall participate in an appropriate rehabilitation program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the rehabilitation program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to participate in the program, the board shall take into account whether the participation would abridge the member's right to the free exercise of religion or whether the member's physical or mental condition has worsened, as determined by the member's treating physician and substantiated by medical evidence.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system from the fund.

SEC. 20. Section 24111 of the Education Code is amended to read:

24111. (a) A member who is receiving a disability retirement allowance under this part pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore the member's ability to perform service in the member's former position of employment or in a comparable level position shall participate in an appropriate rehabilitation program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the rehabilitation program shall cause the disability retirement allowance under this part to be terminated. In determining whether a member has good cause for failure to participate in the program, the board shall take into account whether the participation would abridge the member's right to the free exercise of religion or whether the member's physical or mental condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system from the fund.

SEC. 21. Section 24214 of the Education Code, as amended by Section 3 of Chapter 903 of the Statutes of 2002, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member may not make contributions 'to the retirement fund or accrue service credit based on compensation earned from that service.

(b) The rate of pay for service performed by a member retired for service under this part as an employee of the employer may not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part may not be required to reinstate for performing the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) multiplied by the percentage increase in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(g) If a member retired for service under this part earns compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in excess of the

limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The language of this section derived from the amendments to the section of this number added by Chapter 394 of the Statutes of 1995, enacted during the 1995–96 Regular Session, is deemed to have become operative on July 1, 1996.

(i) This section shall become operative on January 1, 2008.

SEC. 22. Section 24216.6 of the Education Code is amended to read:

24216.6. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before July 1, 2000.

(2) The member retired for service is employed by a school district to provide direct remedial instruction to pupils in grades 2 to 12, inclusive. ''Remedial instruction'' means the programs specified in Sections 37252 and 37252.2.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

SEC. 23. Section 24221 of the Education Code is amended to read:

24221. (a) A member who retires for service on or after January 1, 2004, and prior to January 1, 2011, and who has reached either the age of 60 years and three months within the month he or she retires or the age of 60 years if he or she has at least 30 years of credited service may elect, on a form prescribed by the system, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this section in lieu of the monthly allowance that would otherwise be payable to the member pursuant to this chapter. The election under this section shall be made at the time the member files his or her application for service retirement allowance as provided in Section 24204.

(b) A member who makes the election described in subdivision (a) shall receive a one-time, lump-sum payment in an amount that equals or does not exceed the lesser of the following amounts:

(1) The actuarial present value of the difference between (A) the monthly allowance payable to the member pursuant to this chapter, and (B) an amount equal to 2 percent of the member's final compensation multiplied by the number of years of credited service and divided by 12.

(2) Fifteen percent of the actuarial present value of the monthly allowance payable to the member under this chapter.

(c) Notwithstanding any other provision of this part, a member who makes the election described in subdivision (a) shall receive a monthly allowance, pursuant to this chapter, that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (b).

(d) A member may not apply a lump-sum payment made pursuant to this section for the purposes of redepositing previously refunded retirement contributions pursuant to Chapter 19 (commencing with Section 23200) or purchasing service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820) or Chapter 14.5 (commencing with Section 22850). The Legislature hereby finds and declares that if a member who elects to receive a partial lump-sum payment also elects to redeposit previously refunded contributions or purchase service credit as a result of the receipt of the lump-sum payment, the Defined Benefit Program may experience a net actuarial impact.

(e) The Legislature reserves the right to modify the provisions of this section to further the objective of permitting eligible members to receive a lump-sum distribution of a portion of their benefits, with a corresponding actuarial reduction in their monthly allowance, so that there is no net actuarial impact to the Defined Benefit Program.

SEC. 24. Section 24300 of the Education Code is amended to read:

24300. (a) A member may, prior to the effective date of the member's retirement, elect an option pursuant to this part that would provide an actuarially modified retirement allowance payable throughout the life of the member and the member's option beneficiary, as follows:

(1) Option 2. The modified retirement allowance shall be paid to the retired member. Upon the retired member's death, an allowance equal to the modified amount that the retired member was receiving shall be paid to the option beneficiary.

(2) Option 3. The modified retirement allowance shall be paid to the retired member. Upon the retired member's death, an allowance equal to one-half of the modified amount that the retired member was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the option beneficiary, an allowance equal to two-thirds of the modified amount that the retired member was receiving shall be paid to the surviving retired member or the surviving option beneficiary.

(4) Option 5. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the option beneficiary, an allowance equal to one-half of the modified amount that the retired member was receiving shall be paid to the surviving retired member or surviving option beneficiary.

(5) Option 6. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to the modified amount that the retired member was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement allowance without modification for the option shall be payable to the retired member. If the option beneficiary predeceases the retired member, the retired member may designate a new option beneficiary. The effective date of the new designation shall be six months following the date notification is received by the board, so long as both the retired member and the designated option beneficiary are then living. Notification shall be on a properly executed form for the new designation. The selection of the new option beneficiary under this subdivision is subject to an actuarial modification of the unmodified retirement allowance. A retired member may not designate any new option beneficiary that would result in any additional liability to the fund.

(6) Option 7. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to one-half of the modified amount the retired member was

receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement allowance without modification for the option shall be payable to the retired member. If the option beneficiary predeceases the retired member, the retired member may designate a new option beneficiary. The effective date of the new designation shall be six months following the date notification is received by the board, provided both the retired member and the designated option beneficiary are then living. Notification shall be on a properly executed form for the new designation. The selection of the new option beneficiary under this subdivision is subject to an actuarial modification of the unmodified retirement allowance. A retired member may not designate any new option beneficiary that would result in any additional liability to the fund.

(7) Option 8. (A) Any member, prior to the effective date of the member's retirement, may designate multiple option beneficiaries. The member who has designated more than one option beneficiary shall select an option that the member is authorized to elect subject to subdivision (e) for each beneficiary designated that would provide an actuarially modified retirement allowance payable throughout the lives of the member and the member's option beneficiaries.

(B) The modified retirement allowance shall be paid to the retired member as long as the retired member and at least one of the option beneficiaries are living. Upon the retired member's death, an allowance shall be paid to each surviving option beneficiary in accordance with the option elected respective to that beneficiary. However, if one or more of the option beneficiaries predeceases the retired member, the retired member's allowance shall be adjusted in accordance with the option elected for the deceased beneficiary. The member shall determine the percentage of the unmodified allowance that will be modified by the election of Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 under this option, the aggregate of which may not exceed 100 percent of the member's unmodified allowance. The election of this option is subject to approval by the board.

(C) A member who is a party to an action for legal separation or dissolution of marriage and who is required by court order to designate a spouse or former spouse as an option beneficiary may designate his or her spouse or former spouse as a sole option beneficiary under subparagraphs (A) and (B). The member shall specify the option selected for the spouse or former spouse and the percentage of his or her unmodified allowance to be modified under the option, consistent with the court order. The percentage of the member's unmodified allowance that is not modified under the option shall remain an unmodified allowance payable to the member. The aggregate of the percentages

specified for the option beneficiary and the member's remaining unmodified allowance, if any, may not exceed 100 percent.

(b) For purposes of this section, the member shall designate an option beneficiary on a form prescribed by the system, which shall be duly executed and filed with the system at the time of the member's retirement.

(c) A member may revoke or change an election of an option at any time prior to the effective date of the member's retirement under this part. A revocation or change of an option may not be made in derogation of a spouse's or former spouse's community property rights as specified in a court order.

(d) On or before July 1, 2004, the board shall evaluate the existing options and annuities provided pursuant to this section, Chapter 38 (commencing with Section 25000) of this part, and Part 14 (commencing with Section 26000) and adopt, as a plan amendment, any appropriate changes to the options and annuities based on the needs of members, participants, and their beneficiaries, including, but not limited to, providing economic security for beneficiaries and reducing complexity in the selection of options and annuities by members and participants. The changes to the options and annuities may have no net actuarial impact on the retirement fund, and the board may establish any eligibility criteria it deems necessary to prevent an adverse actuarial impact to the fund. The board shall designate the effective date of the plan amendment, which shall be at least 18 months after the amendment is adopted by the board, and notwithstanding any other provision of this section, the options and annuities available to members and participants eligible to retire pursuant to this part and Part 14 (commencing with Section 26000), after the effective date of the plan amendment made pursuant to this subdivision, shall reflect the changes adopted as a plan amendment pursuant to this subdivision.

(e) Any member or participant who retired and elected an option or a joint and survivor annuity, or who filed a preretirement election of an option prior to the effective date of the plan amendment made pursuant to subdivision (d), may elect to change to a different option or joint and survivor annuity, as modified by the board as a plan amendment pursuant to subdivision (d), if the member or participant meets all the criteria established by the board to prevent a change in an option or joint and survivor annuity from having an adverse actuarial impact on the retirement fund, including, but not limited to, the effective date of a new designation or limitations on any changes if a member or participant, as the case may be, or beneficiary, or both, is currently not living or afflicted with a known terminal illness. The member or participant shall designate the change during the six-month period that begins with the effective date of the plan amendment, on a form prescribed by the system. Any

member changing an option election pursuant to this subdivision is not subject to the allowance reduction prescribed in Section 24309 or 24310 as a result of the election. If a member or participant elects to change his or her option or joint and survivor annuity under this subdivision, the member or participant shall retain the same option beneficiary or beneficiaries as named in the prior designation.

(f) The Legislature reserves the right to modify this section prior to the effective date of the plan amendment made pursuant to subdivision (d) to prevent any actuarial impact to the fund.

SEC. 25. Section 24606 of the Education Code is amended to read:

24606. (a) If any warrant drawn in payment of contributions or accumulated contributions or benefits under this plan remains unclaimed or the legal claimant cannot be found, the board shall redeposit the proceeds of the warrant in the retirement fund, and shall hold the proceeds for the legal claimant without further accumulation of interest. The redeposit does not operate to establish the membership of the claimant in this plan.

(b) Subdivision (a) applies to warrants drawn and canceled by the Controller pursuant to Section 17070 of the Government Code, except that, upon notice of cancellation, the proceeds revert to and become a part of the retirement fund, and shall be applied to meet the liabilities of the retirement fund.

(c) The board may at any time after reversion of proceeds, as provided above to the retirement fund, and upon receipt of proper information satisfactory to it, return from the retirement fund an amount equal to those proceeds to the credit of the legal claimant.

SEC. 26. Section 24615 of the Education Code is amended to read:

24615. (a) If the board determines that contributions are due the system under this part from a retired member, disabled member, or a person who has died, and the person is unable to pay the amount due, the board may withhold all or part of subsequent payments due the retired member, disabled member, or survivor, until the amounts withheld equal the contributions due plus regular interest to the date of payment. Total contributions plus regular interest due shall be recovered by the system within 18 months.

(b) Any payment of contributions that a member or beneficiary is required by law to make to the system shall be paid upon receipt of written notice from the system. Payment may be made either in a lump sum or installments, as permitted by the system. Payment of contributions due the system not discovered or unpaid, for whatever reason, prior to the time of retirement, disability, or death shall be paid prior to granting an allowance or benefit to the member or beneficiary unless, in the opinion of the board, the making of the payment prior to receipt of an allowance or benefit would impose an undue hardship, in

which case payment may be made by the system withholding not more than 18 consecutive monthly installments from payments due from the system. Those installments may not be less than twenty-five dollars ($25) per month, except for the last installment, which may be less than twenty-five dollars ($25).

SEC. 27. Section 24616 of the Education Code is amended to read:

24616. Any overpayment made to or on behalf of any member, former member, or beneficiary, including but not limited to contributions, interest, benefits of any kind, federal or state tax, or insurance premiums, shall be deducted from any subsequent benefit that may be payable under either the Defined Benefit Program, the Defined Benefit Supplement Program, or the Cash Balance Benefit Program. These deductions shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of the recovery the extent of liability for restitution.

SEC. 28. Section 24617 of the Education Code is amended to read:

24617. (a) To recover an amount overpaid under this part, the corrected monthly allowance payable under the Defined Benefit Program or benefit payable under the Defined Benefit Supplement Program or the Cash Balance Benefit Program may be reduced by no more than 5 percent if the overpayment was due to error by the system, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance or benefit.

(b) This section does not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance or benefit.

SEC. 29. Section 24975 of the Education Code is amended to read:

24975. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code that an employer may choose to establish and offer to its employees who are members or participants of the plan under this part or Part 14 (commencing with Section 26000) or any employee of a local public agency or political subdivision of this state that employs persons to perform creditable service subject to coverage by the plan under this part.

(b) If an employer adopts a deferred compensation plan described in subdivision (a):

(1) The employer shall enter into a written contractual arrangement with the system under which the system, or a third-party administrator acting on behalf of the system, shall provide investment, recordkeeping, and administrative services for the deferred compensation plan.

(2) The initial period of the contractual arrangement described in paragraph (1) shall be for a term of five years.

(3) The deferred compensation plan shall continue to constitute a separate plan established and maintained by the adopting employer.

(4) The system shall be treated as acting on behalf of the employer in administering the deferred compensation plan.

(5) The terms and administration of the deferred compensation plan shall be in accordance with the applicable provisions of Section 457 of the Internal Revenue Code.

(6) In administering the deferred compensation plan on behalf of the employer, the board shall have the same investment authority and discretion and be subject to the same fiduciary standards pursuant to Chapter 4 (commencing with Section 22250), with respect to amounts deferred under the deferred compensation plan as applied by the system with respect to the Teachers' Retirement Fund.

(c) If an employer establishes and maintains a deferred compensation plan described in subdivision (a), the deferred compensation plan shall be offered to all of its employees who are eligible to participate pursuant to this section.

(d) An employee participating in a deferred compensation plan established by an employer under this section shall enter into a written agreement with the employer for the deferral of compensation prior to the performance of the services to which that compensation relates.

(e) If an employer chooses to establish and maintain a deferred compensation plan described in subdivision (a) that is to be administered by the system, the employer shall take all necessary or appropriate action to implement this section in cooperation with the system.

SEC. 30. Section 25000.9 of the Education Code is amended to read:

25000.9. For purposes of this chapter and Section 23300, ''nonmember spouse'' means a member's spouse or former spouse who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part. A nonmember spouse may not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage:

(a) A separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member's retirement allowance under the Defined Benefit Program.

(b) A separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the

member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 31. Section 25018.5 of the Education Code is amended to read:

25018.5. When a disabled member returns to work in his or her former position of employment or in a comparable level position and within six months of return experiences a recurrence of the original disability, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former Defined Benefit Supplement disability benefit under this chapter shall again become payable as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of service for which compensation is payable to the member provided the member complies with the provisions of Section 24003 or 24103, as applicable.

SEC. 32. Section 25100 of the Education Code is amended to read:

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, nonbank custodian, 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. ''Nonbank custodian'' means a fund custodian, other than a bank, that meets the criteria of a trustee specified in Section 408(a)(2) of the Internal Revenue Code.

SEC. 33. Section 25101 of the Education Code is amended to read:

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 the 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.

SEC. 34. Section 25940 of the Education Code is amended to read:

25940. (a) Effective July 1, 2001, the system shall pay to the federal Centers for Medicare and Medicaid Services or a successor agency the premiums associated with Medicare Part A for retired or disabled members described in this section.

(b) This section shall apply only to a retired member of the Defined Benefit Program who meets all of the following requirements:

(1) The member retired prior to January 1, 2001, or began receiving a disability allowance prior to January 1, 2001, and has been continually disabled since January 1, 2001.

(2) The member is not eligible for Medicare Part A without payment of a premium.

(3) The member is at least 65 years of age.

(4) The member enrolled in Medicare Parts A and B.

(c) The board may extend eligibility for the payments described in this section to members of the Defined Benefit Program who meet the requirements of subdivision (d) and who retire or begin receiving a disability allowance on or after January 1, 2001, within a school year specified by the board, if the board finds that the cost of the payments for members who retire or begin receiving a disability allowance during the specified school year may be paid within the anticipated resources available in the fund, as determined by the actuarial valuation of the

program established by this chapter. Any extension of eligibility to members who retire or begin receiving a disability allowance on or after January 1, 2001, shall be provided equally to any member who meets the requirements of subdivision (d) and retires or begins receiving a disability allowance during the school year specified by the board.

(d) (1) Eligibility for the payments described in this section pursuant to subdivision (c) shall be limited to members of the Defined Benefit Program who do either of the following:

(A) Retires from an employer that does either of the following:

(i) Completed a division pursuant to Section 22156 of the Government Code prior to January 1, 2001.

(ii) Completed or is conducting a division pursuant to Section 22156 of the Government Code on or after January 1, 2001, and, if the member was less than 58 years of age at the time of the division, the member elected to be covered by Medicare.

(B) Began receiving a disability allowance and continuously receives a disability allowance until 65 years of age or older and the member's last employer does any of the following:

(i) Completed a division pursuant to Section 22156 of the Government Code prior to January 1, 2001.

(ii) Completed or is conducting a division pursuant to Section 22156 of the Government Code on or after January 1, 2001, and, if the member was still actively employed and less than 58 years of age at the time of the division, the member elected to be covered by Medicare.

(iii) Completed or is conducting a division pursuant to Section 22156 of the Government Code on or after January 1, 2001, and, if the member is no longer actively employed, the division was completed prior to the time the member reached normal retirement age.

(2) For purposes of paragraph (1), a division occurs during the 10-day period during which the member has the opportunity to elect to be covered by Medicare pursuant to Section 22156 of the Government Code.

(3) This subdivision does not apply to a member who retires from a district, or is receiving a disability allowance and the member was last employed in a district, that either as of January 1, 2001, had no members who were less than 58 years of age and who were hired prior to April 1, 1986, or was created pursuant to a formation or a reorganization on or after April 1, 1986, and prior to January 1, 2001.

(e) The amount paid to the federal Centers for Medicare and Medicaid Services or a successor agency pursuant to this section shall include any surcharges applicable to enrollment in Medicare Part A or Part B by members who retired prior to January 1, 2001, and who enrolled in Medicare Parts A and B after the age of 65 years and prior to July 1, 2001. If the system pays the Part A premium and Part B surcharges on behalf

of a member and that member later becomes eligible for Part A coverage without payment of a premium, the system shall continue to pay any applicable Part B surcharges on behalf of that member. The board may require a member on whose behalf a surcharge would be paid pursuant to this subdivision to authorize the system to deduct the Part B premium from the member's retirement allowance as a condition of having the system pay the Part A premium pursuant to this section.

SEC. 35. The changes made to Section 22820 of the Education Code by this act shall become operative on July 1, 2004.

SEC. 36. Any section of any act enacted by the Legislature during the 2003 calendar year that takes effect on or before the effective date of this act, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

CHAPTER 860

An act to amend Sections 71000 and 71003 of the Education Code, relating to community colleges.

[Approved by Governor October 11, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of 16 voting members and one nonvoting member, appointed by the Governor, as follows:

(a) Twelve members, each appointed with the advice and consent of two-thirds of the membership of the Senate to six-year staggered terms. Two of these members shall be current or former elected members of local community college district governing boards.

(b) (1) (A) One voting student member, and one nonvoting student member, who exercise their duties in accordance with the procedure set forth in paragraph (3).

(B) These students shall be enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of their terms, or until a replacement has been named. A student member shall be enrolled in a

community college at least one semester prior to his or her appointment, and shall meet and maintain the minimum standards of scholarship prescribed for community college students.

(C) Each student member shall be appointed from a list of names of at least three persons submitted to the Governor by the California Student Association of Community Colleges.

(2) The term of office of one student member of the board shall commence on July 1 of an even-numbered year, and expire on June 30 two years thereafter. The term of office of the other student member of the board shall commence on July 1 of an odd-numbered year, and expire on June 30 two years thereafter. Notwithstanding paragraph (1), a student member who graduates from his or her college on or after January 1 of the second year of his or her term of office may serve the remainder of the term.

(3) During the first year of a student member's term, a student member shall be a member of the board and may attend all meetings of the board and its committees. At these meetings, a student member may fully participate in discussion and debate, but may not vote. During the second year of a student member's term, a student member may exercise the same right to attend meetings of the board, and its committees, and shall have the same right to vote as the members appointed pursuant to subdivisions (a) and (c).

(4) Notwithstanding paragraph (3), if a student member resigns from office or a vacancy is otherwise created in that office during the second year of a student member's term, the remaining student member shall immediately assume the office created by the vacancy and all of the participation privileges of the second-year student member, including the right to vote, for the remainder of that term of office.

(c) Two voting tenured faculty members from a community college, who shall be appointed for two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. Each seat designated as a tenured faculty member seat shall be filled by a tenured faculty member from a community college pursuant to this section and Section 71003.

(d) One voting classified employee, who shall be appointed by the Governor for a two-year term. The Governor shall appoint the classified employee member from a list of at least three persons furnished by the exclusive representatives of classified employees of the California Community Colleges.

SEC. 2. Section 71003 of the Education Code is amended to read:

71003. (a) Except for the student members, the faculty members, and the classified employee member appointed by the Governor, any vacancy in an appointed position on the board shall be filled by

appointment by the Governor, subject to confirmation by two-thirds of the membership of the Senate. A vacancy in the office of a student member, a faculty member, or the classified employee member shall be filled by appointment by the Governor.

(b) The appointee to fill a vacancy shall hold office only for the balance of the unexpired term.

SEC. 3. The current membership of the Board of Governors of the California Community Colleges shall not be affected by the amendment to Section 71000 of the Education Code made by the act adding this section. The Governor shall appoint the member specified in subdivision (d) of Section 71000 of the Education Code after the first expiration of the term of a member specified in subdivision (a) of Section 71000, other than a member who is a current or former member of a local community college district governing board, that occurs after the effective date of the act adding this section.

CHAPTER 861

An act to add Section 21230 to the Government Code, relating to public employees' retirement.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 21230 is added to the Government Code, to read:

21230. (a) A safety member who is retired for service, with at least 20 years of service in corrections or at a jail, may serve without reinstatement from service retirement or loss or interruption of benefits provided by this system upon appointment by a contracting agency described in subdivision (b) to the position of superintendent, deputy superintendent, or captain of a jail or other adult correctional facility of the contracting agency to which state inmates have been transferred pursuant to an agreement, having a term of 20 years, described in Section 2910 or 2910.5 of the Penal Code. Appointments under this section shall be reported to the board and shall be accompanied by the resolution adopted by the governing body of the contracting agency.

(b) This section applies only if the appointing contracting agency is a city that does not maintain a municipal police department.

CHAPTER 862

An act to amend Sections 48645.5, 48850, 48859, 49061, 49069.5, 49076, and 56055 of, and to add Sections 48853 and 48853.5 to, the Education Code, and to amend Sections 361, 366.27, 726, 727.2, 4570, 16000, and 16501.1 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 48645.5 of the Education Code is amended to read:

48645.5. Each public school district and county office of education shall accept for credit full or partial coursework satisfactorily completed by a pupil while attending a public school, juvenile court school, or nonpublic, nonsectarian school or agency. The coursework shall be transferred by means of the standard state transcript. If a pupil completes the graduation requirements of his or her school district of residence while being detained, the school district of residence shall issue to the pupil a diploma from the school the pupil last attended before detention or in the alternative, the county superintendent of schools may issue the diploma.

SEC. 2. Section 48850 of the Education Code is amended to read:

48850. (a) It is the intent of the Legislature to ensure that all pupils in foster care and those who are homeless as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) have a meaningful opportunity to meet the challenging state pupil academic achievement standards to which all pupils are held. In fulfilling their responsibilities to these pupils, educators, county placing agencies, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements and to ensure that each pupil is placed in the least restrictive educational programs, and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions must be based on the best interests of the child.

(b) Every county office of education shall make available to agencies that place children in licensed children's institutions information on educational options for children residing in licensed children's institutions within the jurisdiction of the county office of education for use by the placing agencies in assisting parents and foster children to choose educational placements.

(c) For purposes of individuals with exceptional needs residing in licensed children's institutions, making a copy of the annual service plan, prepared pursuant to subdivision (b) of Section 56205, available to those special education local plan areas that have revised their local plans pursuant to Section 56836.03 shall meet the requirements of subdivision (b).

SEC. 3. Section 48853 is added to the Education Code, to read:

48853. (a) A pupil placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(2) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 727 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interest of the pupil to be placed in another educational program, or that the pupil continue in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

(b) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(c) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin, as defined in subdivision (e) of Section 48853.5, pending resolution of the dispute.

(d) This section does not supersede other laws that govern pupil expulsion.

(e) This section does not supersede any other law governing the educational placement in a juvenile court school, as defined by Section 48645.1, of a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility.

(f) Foster children living in emergency shelters, as referenced in McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11431 et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(1) For health and safety emergencies.

(2) To provide temporary, special, and supplementary services to meet the child's unique needs if a decision regarding whether it is in the child's best interest to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would otherwise not receive educational services.

The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of the child.

(g) All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

SEC. 4. Section 48853.5 is added to the Education Code, to read:

48853.5. (a) This section applies to any foster child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24, the educational liaison shall be affiliated with the local foster children services program. The liaison shall do all of the following:

(1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.

(2) Assist foster children when transferring from one school to another or from one school district to another in ensuring proper transfer of credits, records, and grades.

(c) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of school of origin.

(d) (1) At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the academic school year.

(2) The liaison, in consultation with and the agreement of the foster child and the person holding the right to make educational decisions for the foster child may, in accordance with the foster child's best interest, recommend that the foster child's right to attend the school of origin be

waived and the foster child be enrolled in any public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

(3) Prior to making any recommendation to move a foster child from his or her school of origin, the liaison shall provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how this recommendation serves the foster child's best interest.

(4) (A) If the liaison in consultation with the foster child and the person holding the right to make educational decisions for the foster child agree that the best interests of the foster child would be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) The new school shall immediately enroll the foster child even if the foster child is unable to produce records or clothing normally required for enrollment, such as previous academic records, medical records, proof of residency, other documentation, or school uniforms.

(C) The liaison for the new school shall, within two business days of the foster child's request for enrollment, contact the school last attended by the foster child to obtain all academic and other records. The school liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

(5) If any dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute.

(6) The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

(e) For purposes of this section, ''school of origin'' means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected, the liaison, in consultation with and the agreement of the foster child and the person holding the right to make educational decisions for the foster child, shall determine in the best interest of the foster child, the school that shall be deemed the school of origin.

(f) This section does not supersede other law governing the educational placements in juvenile court schools, as defined by Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

SEC. 5. Section 48859 of the Education Code is amended to read:

48859. For purposes of this chapter, the following terms have the following meanings:

(a) ''County placing agency'' means the county social service department or county probation department.

(b) ''Educational authority'' means an entity designated to represent the interests of a child for educational and related services.

SEC. 6. Section 49061 of the Education Code is amended to read:

49061. As used in this chapter:

(a) ''Parent'' means a natural parent, an adopted parent, or legal guardian. If the parents are divorced or legally separated, only a parent having legal custody of the pupil may challenge the content of a record pursuant to Section 49070, offer a written response to a record pursuant to Section 49072, or consent to release records to others pursuant to Section 49075. Either parent may grant consent if both parents have notified, in writing, the school or school district that an agreement has been made. If a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) ''Pupil record'' means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

''Pupil record'' does not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, ''substitute'' means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(c) ''Directory information'' means one or more of the following items: pupil's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the pupil.

(d) ''School district'' means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the department.

(e) ''Access'' means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

(f) ''County placing agency'' means the county social service department or county probation department.

SEC. 7. Section 49069.5 of the Education Code is amended to read:

49069.5. (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency.

(c) As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and aware of the specific educational record keeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school, and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

SEC. 8. Section 49076 of the Education Code is amended to read:

49076. A school district is not authorized to permit access to pupil records to any person without written parental consent or under judicial order except that:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district, members of a school attendance review board appointed pursuant to Section 48321, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and administrative head of an education agency, state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, any data collected by those officials shall be protected in a manner which will not permit the personal identification of pupils or their parents by other than those officials, and any personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

(6) A pupil 16 years of age or older or having completed the 10th grade who requests access.

(7) Any district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the Welfare and Institutions Code, or participating in the

presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(8) A prosecuting agency for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200) of Part 27) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400) of Part 27).

(9) Any probation officer or district attorney for the purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(10) Any judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(11) Any county placing agency for the purpose of fulfilling the requirements of the health and education summary required pursuant to Section 16010 of the Welfare and Institutions Code or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law and to assist with the school transfer or enrollment of a pupil. School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by electronic mail, facsimile, electronic format, or other secure means.

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons.

(2) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) The county elections official, for the purpose of identifying pupils eligible to register to vote, and for conducting programs to offer pupils

an opportunity to register to vote. The information, however, shall not be used for any other purpose or given or transferred to any other person or agency.

(4) Accrediting associations in order to carry out their accrediting functions.

(5) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations and the information will be destroyed when no longer needed for the purpose for which it is obtained.

(6) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

A person, persons, agency, or organization permitted access to pupil records pursuant to this section may not permit access to any information obtained from those records by any other person, persons, agency, or organization without the written consent of the pupil's parent. However, this paragraph does not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate interest in the information.

(c) Notwithstanding any other provision of law, any school district, including any county office of education or superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or districts as to information or records which are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements are met:

(1) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(2) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(3) Each school district shall comply with the access log requirements of Section 49064.

(4) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(5) An agency or school district may not make public or otherwise release information on an individual contained in the database where the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

SEC. 9. Section 56055 of the Education Code is amended to read:

56055. (a) (1) Except as provided in subdivisions (b), (c), and (d), a foster parent may exercise, to the extent permitted by federal law, including, but not limited to, Section 300.20 of Title 34 of the Code of Federal Regulations, the rights related to his or her foster child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations. The foster parent may represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The foster parent may sign any consent relating to individualized education program purposes.

(2) A foster parent exercising rights relative to a foster child under this section may consult with the parent or guardian of the child to ensure continuity of health, mental health, or other services.

(b) A foster parent who had been excluded by court order from making educational decisions on behalf of a pupil does not have the rights relative to the pupil set forth in subdivision (a).

(c) This section only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child, and the child has been placed in a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or paragraph (5) or (6) of subdivision (b) of Section 727.3 of the Welfare and Institutions Code.

(d) For purposes of this section, a foster parent shall include a person, relative caretaker, or nonrelative extended family member as defined in Section 362.7 of the Welfare and Institutions Code, who has been licensed or approved by the county welfare department, county

probation department, or the State Department of Social Services, or who has been designated by the court as a specified placement.

SEC. 10. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7 has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, ''an individual who would have a conflict of interest,'' means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

If the court is unable to appoint a responsible adult to make educational decisions for the child and paragraphs (1) to (5), inclusive, do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to

the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

(b) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court, if the department or agency is willing to accept the relinquishment.

(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts. The court shall state the facts on which the decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 11. Section 366.27 of the Welfare and Institutions Code is amended to read:

366.27. (a) If a court, pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, orders the placement of a minor in a planned permanent living arrangement with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care as the custodial parent of the minor.

(b) If a court orders the placement of a minor in a planned permanent living arrangement with a foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, the court may limit the right of the minor's parent or guardian to make educational decisions on the minor's behalf, so that the foster parent, relative caretaker, or nonrelative extended family member may exercise the educational consent duties pursuant to Section 56055 of the Education Code.

(c) If a court orders the placement of a minor in a planned permanent living arrangement, for purposes of this section, a foster parent shall include a person, relative caretaker, or a nonrelative extended family member as defined in Section 362.7, who has been licensed or approved by the county welfare department, county probation department, or the State Department of Social Services, or has been designated by the court as a specified placement.

SEC. 12. Section 726 of the Welfare and Institutions Code is amended to read:

726. (a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3, at which time the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7 has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. For purposes of this section, ''an individual

who would have a conflict of interest,'' means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

If the court is unable to appoint a responsible adult to make educational decisions for the child and paragraphs (1) to (5), inclusive, do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

(c) If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

As used in this section and in Section 731, ''maximum term of imprisonment'' means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ''maximum term of imprisonment'' shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the ''maximum term of imprisonment'' is the longest term of imprisonment prescribed by law.

''Physical confinement'' means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

SEC. 13. Section 727.2 of the Welfare and Institutions Code is amended to read:

727.2. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.

(a) If the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services to facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to address the needs of the minor while in foster care, except as provided in subdivision (b).

(b) Reunification services need not be provided to a parent or legal guardian if the court finds by clear and convincing evidence that one or more of the following is true:

(1) Reunification services were previously terminated for that parent or guardian, pursuant to Section 366.21 or 366.22, or not offered, pursuant to subdivision (b) of Section 361.5, in reference to the same minor.

(2) The parent has been convicted of any of the following:

(A) Murder of another child of the parent.

(B) Voluntary manslaughter of another child of the parent.

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit that murder or manslaughter described in subparagraph (A) or (B).

(D) A felony assault that results in serious bodily injury to the minor or another child of the parent.

(3) The parental rights of the parent with respect to a sibling have been terminated involuntarily, and it is not in the best interest of the minor to reunify with his or her parent or legal guardian.

If no reunification services are offered to the parent or guardian, the permanency planning hearing, as described in Section 727.3, shall occur

within 30 days of the date of the hearing at which the decision is made not to offer services.

(c) The status of every minor declared a ward and ordered to be placed in foster care shall be reviewed by the court no less frequently than once every six months. The six-month time periods shall be calculated from the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 at the first status review hearing. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan, pursuant to subdivision (b) of Section 706.5, and submit the report to the court prior to each status review hearing, pursuant to subdivision (b) of Section 727.4. The social study report shall include all reports the probation officer relied upon in making his or her recommendations.

(d) Prior to any status review hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may provide the probation officer with a report containing its recommendations. Prior to any status review hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to subdivision (c) and pursuant to this subdivision.

(e) At any status review hearing prior to the first permanency planning hearing, the court shall consider the safety of the minor and make findings and orders which determine the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.

(3) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the minor. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the minor. If the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the minor pursuant to Section 726.

(4) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.

(5) The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative or referred to another planned permanent living arrangement.

(6) In the case of a minor who has reached 16 years of age, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living.

The court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer's report and any other evidence relied upon in reaching its decision.

(f) At any status review hearing prior to the first permanency hearing, the court shall order return of the minor to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of evidence, that the return of the minor to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report, recommendations, and the case plan pursuant to subdivision (b) of Section 706.5, the report and recommendations of any child advocate appointed for the minor in the case, and any other reports submitted to the court pursuant to subdivision (d), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(g) At all status review hearings subsequent to the first permanency planning hearing, the court shall consider the safety of the minor and make the findings and orders as described in paragraphs (1) to (4), inclusive, and (6) of subdivision (e). The court shall either make a finding that the previously ordered permanent plan continues to be appropriate or shall order that a new permanent plan be adopted pursuant to subdivision (b) of Section 727.3. However, the court shall not order a permanent plan of ''return to the physical custody of the parent or legal guardian after further reunification services are offered,'' as described in paragraph (2) of subdivision (b) of Section 727.3.

(h) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided that the administrative panel meets all of the requirements listed in subparagraph (B) of paragraph (7) of subdivision (d) of Section 727.4.

SEC. 14. Section 4570 of the Welfare and Institutions Code is amended to read:

4570. (a) In order to remain informed regarding the quality of services in the area and to protect the legal, civil, and service rights of persons with developmental disabilities, the Legislature finds that it is

necessary to conduct life quality assessments with consumers served by the regional centers.

(b) The department shall enter into an interagency agreement with the state council, on behalf of the area boards, to conduct the life quality assessments described in this section. This interagency agreement shall include assurances that the state council shall not direct the area boards in their conduct of these assessments or in the content or format of the annual reports submitted to the council by the area boards.

(c) Consistent with the responsibilities described in this chapter, the area board, with the consent of the consumer and, when appropriate, a family member, shall conduct life quality assessments with consumers living in out-of-home placements, supported living arrangements, or independent living arrangements no less than once every three years or more frequently upon the request of a consumer, or, when appropriate, a family member. If a consumer who is eligible to receive a life quality assessment is a dependent of a juvenile court pursuant to Section 300, 601, or 602, the assessment may be conducted with the consent of the court or social services agency. A regional center or the department shall annually provide the local area board with a list, including, but not limited to, the name, address, and telephone number of each consumer, and, when appropriate, a family member, the consumer's date of birth, and the consumer's case manager, for all consumers living in out-of-home placements, supported living arrangements, or independent living arrangements, in order to facilitate area board contact with consumers and, when appropriate, family members, for the purpose of conducting life quality assessments.

(d) The life quality assessments shall be conducted by utilizing the ''Looking at Life Quality Handbook'' or subsequent revisions developed by the department.

(e) The assessments shall be conducted by consumers, families, providers, and others, including volunteer surveyors. Each area board shall recruit, train, supervise, and coordinate surveyors. Upon request, and if feasible, the area board shall respect the request of a consumer and, when appropriate, family member, for a specific surveyor to conduct the life quality assessment. An area board may provide stipends to surveyors.

(f) A life quality assessment shall be conducted within 90 days prior to a consumer's triennial individual program plan meeting, so that the consumer and regional center may use this information as part of the planning process.

(g) Prior to conducting a life quality assessment, the area board shall meet with the regional center to coordinate the exchange of appropriate information necessary to conduct the assessment and ensure timely followup to identified violations of any legal, civil, or service rights.

(h) Following the completion of each life quality assessment, the area board shall develop a report of its findings and provide a copy of the report to the consumer, when appropriate, family members, and the regional center providing case management services to the consumer. A copy of the life quality assessment of a consumer who is a dependent of a juvenile court pursuant to Section 300, 601, or 602 shall be provided, upon request, to the court or social services agency. In the event that a report identifies alleged violations of any legal, civil, or service right, the area board shall notify the regional center and the department of the alleged violation. The department shall monitor the regional center to ensure that violations are addressed and resolved in a timely manner.

(i) Regional centers shall review information from the life quality assessments on a systemic basis in order to identify training and resource development needs.

(j) (1) On an annual basis, each area board shall prepare and submit a report to the state council describing its activities and accomplishments related to the implementation of this section. The report shall include, but not be limited to, the number of life quality assessments conducted, the number of surveyors, including those provided stipends, a description of the surveyor recruitment process and training program, including any barriers to recruitment, the number, nature, and outcome of any identified violations of legal, civil, or service rights reported to regional centers, and recommendations for improvement in the life quality assessment process.

(2) By September 15 of each year, the state council shall compile these reports and forward to the Governor, the Legislature, and the department.

(k) Implementation of this section shall be subject to an annual appropriation of funds in the Budget Act for this purpose.

SEC. 15. Section 16000 of the Welfare and Institutions Code is amended to read:

16000. (a) It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with the relative as required by Section 7950 of the Family Code. If the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most familylike setting and to live as close

to the child's family as possible pursuant to subdivision (c) of Section 16501.1. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.

(b) It is further the intent of the Legislature to ensure that all pupils in foster care and those who are homeless as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) have the opportunity to meet the challenging state pupil academic achievement standards to which all pupils are held. In fulfilling their responsibilities to pupils in foster care, educators, county placing agencies, care providers, advocates, and the juvenile courts shall work together to maintain stable school placements and to ensure that each pupil is placed in the least restrictive educational programs, and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions must be based on the best interests of the child.

SEC. 16. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of

a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social

worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor

for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.1. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive

services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan

forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.2. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in

accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to

Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's

failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.3. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted

pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the

child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(j) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.4. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to

a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings,

including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed

in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from

the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.5. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations

adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and

sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.6. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this

information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A

determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's

facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 16.7. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles set forth in this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most

appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) As used in subdivisions (b) and (c), a home or setting that is ''safe'' means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

(e) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations

adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and

sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(j) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is placed in group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(*l*) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 17. Section 16.1 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 408. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and AB 1151 and SB 591 are not enacted or do not amend Section 16501.1 of the Welfare and Institutions Code, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 408, in which case Sections 16, 16.2, 16.3, 16.4, 16.5, and 16.6 of this bill shall not become operative.

SEC. 18. Section 16.2 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 1151. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and AB 408 and SB 591 are not enacted or do not amend Section 16501.1 of the Welfare and Institutions Code, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1151, in which case Sections 16, 16.1, 16.3, 16.4, 16.5, 16.6, and 16.7 of this bill shall not become operative.

SEC. 19. Section 16.3 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and SB 591. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, and AB 408 and AB 1151 are not enacted or do not amend Section 16501.1 of the Welfare and Institutions Code (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 490, in which case Sections 16, 16.1, 16.2, 16.4, 16.5, 16.6, and 16.7 of this bill shall not become operative.

SEC. 20. Section 16.4 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 408, and AB 1151. It shall only become operative if (1) these 3 bills are enacted and become effective on or before January 1, 2004, and SB 591 is not enacted or does not amend Section 16501 of the Welfare and Institutions Code, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 408 and AB 1151, in which case Sections 16, 16.1, 16.2, 16.3, 16.5, 16.6, and 16.7 of this bill shall not become operative.

SEC. 21. Section 16.5 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 408, and SB 591. It shall only become operative if (1) these 3 bills are enacted and become effective on or before January 1, 2004, and AB 1151 is not enacted or does not amend Section 16501 of the Welfare and Institutions Code, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 408 and SB 591, in which case Sections 16, 16.1, 16.2, 16.3, 16.4, 16.6, and 16.7 of this bill shall not become operative.

SEC. 22. Section 16.6 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 1151, and SB 591. It shall only become operative if (1) these 2 bills are enacted and become effective on or before January 1, 2004, and AB 408 is not enacted or does not amend Section 16501.1 of the Welfare and Institutions Code (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1151 and SB 591, which case Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, and 16.7 of this bill shall not become operative.

SEC. 1.7.

SEC. 24. Section 16.7 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill, AB 408, AB 1151, and SB 591. It shall only become operative if (1) all 4 bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 408, AB 1151, and

SB 591, in which case Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, and 16.6 of this bill shall not become operative.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 863

An act to amend Section 5784.1 of the Public Resources Code, and to amend Section 13 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to local government.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 5784.1 of the Public Resources Code is amended to read:

5784.1. Notwithstanding any other provision of law, if on December 31, 2001, a member of the board of directors was elected or appointed as a voter of this state and is an owner of real property within the district, pursuant to the former Section 5783.3, that person may continue to serve on that board of directors for the remainder of the term for which he or she was elected or appointed, and that person may be elected or appointed to that board of directors in the future after that term ends, provided that the person continues to be a voter of this state and an owner of real property within the district.

SEC. 2. Section 13 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 13. (a) All matters and things necessary for the proper administration of the affairs of the authority that are not provided for in this act shall be provided for by the board of directors of the authority by ordinance or resolution. Any action required by this act to be done by resolution may be done, with equal validity, by ordinance.

(b) (1) The board of directors of the authority may adopt regulations regarding its facilities, property, and rights-of-way. The board of directors, by ordinance, may make a violation of any regulation adopted pursuant to this subdivision subject to an administrative fine.

(2) The board of directors shall set forth, by ordinance or resolution, the administrative procedures that govern the imposition, enforcement,

collection, and administrative review by the authority of those administrative fines.

(3) The amount of the administrative fine shall not exceed the maximum fine for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the Government Code. For the purpose of carrying out this subdivision, Section 53069.4 of the Government Code applies, except that any action required by that section to be taken by ordinance may be taken by resolution of the board of directors.

(c) The board of directors of the authority, by ordinance, may establish procedures for the abatement of encroachments that violate any regulation adopted pursuant to subdivision (b) and to recover the costs of abatement by means of a lien with the status and priority of a judgment lien on the property that is subject to the easement or right-of-way from which the encroachment is abated. These procedures shall provide for a reasonable period, specified in the ordinance, during which a person responsible for a continuing violation may abate the encroachment before the commencement of any abatement under this section. For the purposes of carrying out this subdivision, Section 38773.1 of the Government Code applies, except that any action required by that section to be taken by the legislative body shall be taken by the board of directors of the authority. The remedy authorized in this subdivision is cumulative to any other remedy authorized by law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 864

An act to amend Sections 52890, 54726, 54734, and 58562 of the Education Code, relating to pupil retention.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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 School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act enacted by the Legislature in January 1986, has proven to be effective in reducing dropout rates, increasing attendance, improving pupil achievement, and creating a positive school culture that supports intellectual, physical, emotional, and social development, as well as the well-being of high-risk pupils in low-performing schools.

(2) In the 1999–2000 school year, 450 schools participated in the Pupil Motivation and Maintenance Program, serving an estimated 413,000 pupils. Those schools perform significantly better than comparable schools that are not in the program by keeping pupils in school by reducing absenteeism, truancy, tardiness, and pupil suspensions for improper behavior. A recent evaluation of the program shows that it is particularly effective with Latino pupils, who comprise 69 percent of all pupils attending schools that participate in the program.

(3) The California Dropout Prevention Network, organized by the participating schools, has been an effective strategy for providing technical assistance and staff development services, and for assisting new schools in planning their schoolsite plans for dropout prevention and schoolsite coordination of categorical resources.

(4) In spite of the fact that participating schools are characterized by poverty and ethnic diversity, which can be indicia of low-performance, 65 percent of participating schools meet or exceed their performance targets, as compared to 52 percent of all other schools.

(b) It is the intent of the legislature to improve the program by implementing recommendations for program improvement and providing for qualified school personnel to assist the Department of Education in providing technical support, training, and program development assistance to participating schools.

SEC. 2. Section 52890 of the Education Code is amended to read:

52890. Each school district and school that submits a school-based motivation and maintenance program plan pursuant to Article 6 (commencing with Section 54720) of Chapter 9 of Part 29 shall include in the plan a description of the manner in which it will utilize outreach consultants. For purposes of this article, each outreach consultant, at a minimum, shall do all of the following:

(a) Possess a Dropout Prevention Specialist Certificate from a California State University, or enroll in a Dropout Prevention Specialist Certificate program within 90 days of the date of hire, except that outreach consultants employed on or before January 1, 2004, are exempt from this requirement.

(b) Demonstrate knowledge of local alternative educational programs and employ those programs to respond to the differential needs and unique learning styles of pupils.

(c) Demonstrate knowledge of local community agencies and community programs to recruit those agencies and programs to assist in the physical or psychological remediation of pupils.

(d) Utilize local school programs, options, and opportunities to assist pupils in locating, securing, or retaining employment.

(e) Utilize techniques that enhance interpersonal communication, self-understanding, self-disclosure, and depth-level sharing.

(f) Employ appropriate methods to create circumstances necessary so that change is permitted and encouraged in individuals, programs, and institutions.

(g) Be responsible for supervising, instructing, conducting negotiations with, and advising pupils and adults.

SEC. 3. Section 54726 of the Education Code is amended to read:

54726. For school-based motivation and maintenance programs, the schoolsite council shall develop a school plan for increasing the retention rate of the school for all pupils, with special emphasis on the needs of high-risk pupils. For schools establishing school-based motivation and maintenance programs, the plan shall include, but need not be limited to, all of the following:

(a) A staff development program for teachers, other school personnel, paraprofessionals, and volunteers, including those participating in special programs.

(b) Provisions for participation in peer group technical support, new school training, program development and staff development activities organized and provided by the network organization of schools implementing pupil motivation and maintenance programs.

(c) Provisions for the utilization of the pupil success team process to identify and assess the needs of pupils who are dropouts or potential dropouts, and to develop programs to meet the needs of those pupils. Each pupil success team shall include all of the following:

(1) Pupils identified as dropouts or potential dropouts wherever appropriate.

(2) The pupil's parents or guardians.

(3) One of the pupil's teachers or, in the case of a school dropout, a teacher who would have provided instruction to the pupil if he or she were still attending school.

(4) The school principal or the principal's designee.

(5) Other appropriate resource teachers or specialists.

(6) Whenever appropriate, representatives of public or private community organizations, park and recreation agencies, law enforcement agencies, or business and industry.

(d) A duty statement describing the specific duties of the outreach consultant and limiting those duties to activities that benefit high-risk pupils, as defined in subdivision (c) of Section 54721.

(e) Procedures for coordinating services from funding sources at the school level to assist pupils to participate successfully in the core academic curricula and specialized curricula related to jobs and career opportunities.

(f) Instructional and auxiliary services to meet the special needs of pupils identified as being at high risk of not succeeding in the regular school program or dropping out of school, non-English-speaking or limited-English-speaking pupils, including instruction in a language these pupils understand; educationally disadvantaged pupils; gifted and talented pupils; and pupils with exceptional needs.

(g) At the elementary school level, provisions for early identification and intervention to address learning problems, including, but not limited to, the assessment of primary grade pupils to identify and commence remediation of developmental and other learning difficulties.

(h) An emphasis on literacy and basic skills development.

(i) An emphasis on curriculum content and teaching strategies that are relevant to job or career opportunities.

(j) A plan that integrates and coordinates the skills and talents of outreach consultants.

(k) Other activities and objectives established by the council.

(*l*) The proposed expenditure of funds available to the school through the programs described in Section 54723 and other available funds.

(m) The schoolsite council shall consult with local officials, including officials from law enforcement and public health, and with representatives from nonprofit organizations that work with at-risk youth before making this proposal.

(n) The schoolsite council shall annually review the school plan, establish a new budget, and, if necessary, make other modifications in the plan to reflect changing needs and priorities.

SEC. 4. Section 54734 of the Education Code is amended to read:

54734. The Superintendent of Public Instruction shall do all of the following:

(a) Assist school districts and schools, upon request, in designing, implementing, or evaluating school plans authorized by this article.

(b) Apportion funds in accordance with Article 3 (commencing with Section 52850) of Chapter 12 of Part 28 and this article.

(c) Conduct program quality and fiscal reviews to do all the following:

(1) Ensure that funds allocated pursuant to this article are expended for the purposes intended.

(2) Provide information helpful to schools in improving their programs.

(3) Provide information and technical assistance helpful to schools in improving the school-based pupil motivation and maintenance programs.

(d) Establish an information dissemination repository, including, but not limited to, model programs, instructional strategies, and effective practices for working with high-risk pupils and increasing the pupil retention of schools and school dropout recovery programs. This repository shall be made available to school districts.

(e) Provide schools eligible to apply for grants under the High Priority Schools Grant Program for Low Performing Schools pursuant to Section 52055.600 with all of the following information:

(1) Program elements for dropout prevention and student support strategies in the Pupil Motivation and Maintenance Program.

(2) Model programs and instructional strategies for high-risk pupils.

(3) Effective practices for increasing pupil retention and dropout recovery programs.

(4) Eligibility requirements and application procedures.

(f) Request that school plans submitted pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28 by school district governing boards be in compliance with this article and any implementing administrative regulations.

(g) The Superintendent of Public Instruction may utilize the services of field personnel with expertise and knowledge of successful pupil motivation and maintenance programs to assist the department in carrying out the activities described in this section.

SEC. 5. Section 58562 of the Education Code is amended to read:

58562. This chapter 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.

CHAPTER 865

An act to add Sections 59001.2 and 59001.4 to, and to add Article 4 (commencing with Section 59050) to Chapter 1 of Part 32 of, the Education Code, relating to teachers.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 59001.2 is added to the Education Code, to read:

59001.2. The Legislature finds and declares all of the following:

(a) It is essential for the well-being and growth of deaf and hard-of-hearing pupils that educational programs recognize the unique nature of deafness and ensure that all deaf and hard-of-hearing pupils have appropriate, ongoing, and fully accessible educational opportunities.

(b) It is essential that a deaf or hard-of-hearing pupil obtain an education in which special education teachers, psychologists, speech therapists, assessors, administrators, and other school and residential program personnel understand the unique nature of deafness and are trained to work with a deaf or hard-of-hearing pupil.

(c) It is essential that a deaf or hard-of-hearing pupil obtain an education in which his or her special education teachers are proficient in the primary language mode of that pupil.

(d) It is essential that a deaf or hard-of-hearing pupil obtain an education in which his or her parents are involved in determining the extent, content, and purpose of programs.

(e) It is essential that a deaf or hard-of-hearing pupil, like all pupils, have programs in which his or her unique vocational needs are provided for, including appropriate research, curricula, programs, staff, and outreach.

(f) Each deaf or hard-of-hearing pupil should receive an education that allows him or her to master a primary language.

SEC. 2. Section 59001.4 is added to the Education Code, to read:

59001.4. It is the intent of the Legislature that programs at the California School for the Deaf provide all of the following:

(a) Each pupil should be 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.

(b) Each pupil should have his or her educational goals, objectives, special education, and related services specified in a written individualized education program.

(c) Procedures and materials for assessment and placement of individuals with exceptional needs should be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument should be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement should be in the individual's mode of communication. All

assessment materials and procedures should be selected and administered pursuant to Section 56320.

(d) Psychological and health services for individuals with exceptional needs should be available to each schoolsite.

(e) Continuous evaluation of the effectiveness of these education programs should be made to ensure the highest quality educational offerings.

(f) Appropriate qualified staff should be employed, consistent with credentialing requirements, to fulfill the educational responsibilities, and positive efforts are made to employ qualified deaf and hard-of-hearing individuals.

(g) Educational and residential program personnel should be adequately prepared to provide educational instruction and services to individuals with exceptional needs in the appropriate communication mode, including American Sign Language.

(h) There should be appropriate access to information and training in American Sign Language for parents and pupils to ensure that they are able to appropriately communicate with their families.

SEC. 3. Article 4 (commencing with Section 59050) is added to Chapter 1 of Part 32 of the Education Code, to read:

Article 4. Employment Qualifications

59050. Notwithstanding Sections 59051, 59052, 59053, and 59054, the California School for the Deaf may not use the American Sign Language Proficiency Interview (ASLPI) or an alternative test selected by the American Sign Language Competency Evaluation Committee of the California School for the Deaf for the purposes specified in this article unless it is first determined that the test is a valid and reliable test for employment purposes.

59051. During the 2004–05, 2005–06, and 2006–07 school years, for purposes of hiring a certificated individual to instruct deaf pupils, preference shall first be given to a candidate who achieves a minimum score of 4 on the American Sign Language Proficiency Interview (ASLPI) or an equivalent score on an alternate test selected by the American Sign Language Competency Evaluation Committee of the California School for the Deaf that assesses American Sign Language linguistic competency.

59052. (a) Commencing with the 2004–05 school year, an individual may not be hired as a certificated employee to instruct deaf pupils, unless the individual achieves a minimum score of 2.5 on the American Sign Language Proficiency Interview (ASLPI) or an equivalent score on an alternate test selected by the American Sign Language Competency Evaluation Committee of the California School

for the Deaf that assesses American Sign Language linguistic competency.

(b) Commencing with the 2005–06 school year, an individual may not be hired as a certificated employee to instruct deaf pupils, unless the individual achieves a minimum score of 3 on the ASLPI or an equivalent score on an alternate test, as described in subdivision (a).

(c) Commencing with the 2006–07 school year, an individual may not be hired as a certificated employee to instruct deaf pupils, unless the individual achieves a minimum score of 3.5 on the ASLPI or an equivalent score on an alternate test, as described in subdivision (a).

(d) The minimum score requirements specified in subdivisions (a) to (d), inclusive, may be waived by the superintendent of the school if he or she certifies that no candidate who meets those requirements and all other selection criteria has applied to instruct deaf pupils and open positions remain.

59053. (a) Commencing with the 2004–05 school year, and every three years thereafter, a certificated employee who instructs deaf pupils and who has not achieved a minimum score of 4 on the American Sign Language Proficiency Interview (ASLPI) or an equivalent score on an alternate test selected by the American Sign Language Competency Evaluation Committee of the California School for the Deaf that assesses American Sign Language linguistic competency, shall retake one of those assessments.

(b) A certificated employee who instructs deaf pupils and who does not achieve a minimum score of 4 on the ASLPI or an equivalent score on an alternate test, as described in subdivision (a), may not be subject to discipline. The certificated employee shall be encouraged to study until that score is achieved.

(c) Any fee imposed to take the ASLPI or an alternate test, as described in subdivision (a), shall be paid by the certificated employee. If the certificated employee receives a minimum score of 4 on the ASLPI or an equivalent score on the alternate test, the California School for the Deaf shall reimburse the certificated employee for that fee.

59054. (a) For purposes of hiring an individual to serve as a substitute teacher, preference shall be given as follows:

(1) First, to a candidate who achieves a minimum score of 4 on the American Sign Language Proficiency Interview (ASLPI) or an equivalent score on an alternate test selected by the American Sign Language Competency Evaluation Committee of the California School for the Deaf that assesses American Sign Language linguistic competency.

(2) Second, to a candidate who achieves a minimum score of 3 on the ASLPI or an equivalent score on an alternate test, as described in paragraph (1).

(3) Third, to a candidate who achieves a minimum score of 2.5 on the ASLPI or an equivalent score on an alternate test, as described in paragraph (1).

(b) Except as provided in subdivision (c), a candidate who fails to achieve a score of at least 2.5 on the ASLPI or who fails to achieve an equivalent score on an alternate test, as described in paragraph (1), may not be hired as a substitute teacher.

(c) The superintendent of the school may waive the requirements of subdivision (b) if no candidate for the substitute teacher position has achieved the minimum score required by subdivision (b) and there is an immediate need to fill an open position.

CHAPTER 866

An act to amend Sections 12699.51, 12699.53, 12699.54, and 12699.62 of the Insurance Code, relating to health care coverage.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) With an estimated 6.3 million persons uninsured, California has the highest population of uninsured in the nation. California has taken steps to alleviate this growing problem. In 2001, the Legislature enacted Assembly Bill 495 (Ch. 648, Stats. 2001) which allows any county agency, local initiative, or county organized health system to provide the state's share of the required match of federal funds from the State Children's Health Insurance Program (SCHIP) to provide coverage for children whose family income is from 251 percent and up to 300 percent of the federal poverty level. This legislation created the opportunity for counties and county health initiatives to use their resources to provide health coverage for children that the state could not.

(b) In 2002, the State of California received approval from the federal government to expand the Healthy Families Program to include parents of eligible children whose family income does not exceed 200 percent of the federal poverty level. Unfortunately, California's current fiscal constraints have prevented it from proceeding with the waiver, leaving the state in a position of being unable to draw down on available federal dollars that will ultimately be reallocated to other states. It is the intent of the Legislature that no state funds shall be spent for the purposes of this program.

(c) In order to utilize California's SCHIP allocation and prevent the loss of federal dollars, it is both appropriate and necessary to expand the option of counties and county health initiatives to use their resources to meet the federal match to cover eligible parents of children enrolled in the Healthy Families Program. Furthermore, it is critical to provide coverage to the parents, in addition to the children, to reduce the financial and health risks families may suffer if some family members are uninsured. The design of the parental program will allow those enrolled in the county programs to be part of the statewide program ultimately implemented by the Managed Risk Medical Insurance Board pursuant to the approved state parental expansion waiver. The funding of eligible parents in each fiscal year will only be provided to the extent that funds are not needed for the children's expansion program portion of the County Health Initiative Matching Fund.

SEC. 2. Section 12699.51 of the Insurance Code is amended to read:

12699.51. For the purposes of this part, the following definitions shall apply:

(a) ''Administrative costs'' means those expenses that are described in Section 1397ee(a)(1)(D) of Title 42 of the United States Code.

(b) ''Adult'' means an uninsured parent of, or, as defined by the board, a person 19 years of age or older responsible for, a child enrolled to receive coverage under Part 6.2 (commencing with Section 12693) or who is enrolled to receive the full scope of Medi-Cal services with no share of cost.

(c) ''Applicant'' means a county, county agency, a local initiative, or a county organized health system.

(d) ''Board'' means the Managed Risk Medical Insurance Board.

(e) ''Child'' means a person under 19 years of age.

(f) ''Comprehensive health insurance coverage'' means the coverage described in Section 12693.60.

(g) ''County organized health system'' means a health system implemented pursuant to Article 2.8 (commencing with Section 14087.5) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 1 (commencing with Section 101675) of Chapter 3 of Part 4 of Division 101 of the Health and Safety Code.

(h) ''Fund'' means the County Health Initiative Matching Fund.

(i) ''Local initiative'' has the same meaning as set forth in Section 12693.08.

SEC. 3. Section 12699.53 of the Insurance Code is amended to read:

12699.53. (a) An applicant that will provide an intergovernmental transfer may submit a proposal to the board for funding for the purpose of providing comprehensive health insurance coverage to any child or adult 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, and in case of a child, whose family income is at or below 300 percent of the federal poverty level, or in case of an adult, whose family income does not exceed 200 percent of the federal poverty level, in specific geographic areas, as published quarterly in the Federal Register by the Department of Health and Human Services, and which child or adult does not qualify for either the Healthy Families Program (Part 6.2 (commencing with Section 12693) or Medi-Cal with no share of cost pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) The proposal shall guarantee at least one year of intergovernmental transfer funding by the applicant at a level that ensures compliance with the requirements of an approved federal waiver and shall, on an annual basis, either commit to fully funding the necessary intergovernmental amount to meet the conditions of the waiver or withdraw from the program. The board may identify specific geographical areas that, in comparison to the national level, have a higher cost of living or housing or a greater need for additional health services, using data obtained from the most recent federal census, the federal Consumer Expenditure Survey, or from other sources. The proposal may include an administrative mechanism for outreach and eligibility.

(c) The applicant may include in its proposal reimbursement of medical, dental, vision, or mental health services delivered to children who are eligible under the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code), if these services are part of an overall program with the measurable goal of enrolling served children in the Healthy Families Program.

(d) If a child is determined to be eligible for benefits for the treatment of an eligible medical condition under the California Children's Services Program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, the health, dental, or vision plan providing services to the child pursuant to this part shall not be responsible for the provision of, or payment for, those authorized services for that child. The proposal from an applicant shall contain provisions to ensure that a child whom the health, dental, or vision plan reasonably believes would be eligible for services under the California Children's Services Program is referred to that program. The California Children's Services Program shall provide case management and authorization of services if the child is found to be eligible for the California Children's Services Program. Diagnosis and treatment services that are authorized by the California Children's Services Program shall be performed by paneled providers for that

program and approved special care centers of that program and approved by the California Children's Services Program. All other services provided under the proposal from the applicant shall be made available pursuant to this part to a child who is eligible for services under the California Children's Services Program.

(e) An applicant may submit a proposal for reimbursement of medical, dental, or vision services delivered to adults as specified in subdivision (a).

(f) (1) If a proposal from an applicant for coverage of an adult includes state funds or funds derived from county sources, the applicant shall, to the extent feasible, include participation by health care service plans licensed by the Department of Managed Health Care or health insurers regulated by the Department of Insurance that contract with the board to provide services to Healthy Families Program subscribers in the geographic area.

(2) This subdivision shall not apply if the population to be served by the applicant's proposal is less than 1,000 persons.

SEC. 4. Section 12699.54 of the Insurance Code is amended to read:

12699.54. (a) The board, in consultation with the State Department of Health Services, the Healthy Families Advisory Committee, and other appropriate parties, shall establish the criteria for evaluating an applicant's proposal, which shall include, but not be limited to, the following:

(1) The extent to which the program described in the proposal provides comprehensive coverage including health, dental, and vision benefits.

(2) Whether the proposal includes a promotional component to notify the public of its provision of health insurance to eligible children.

(3) The simplicity of the proposal's procedures for applying to participate and for determining eligibility for participation in its program.

(4) The extent to which the proposal provides for coordination and conformity with benefits provided through Medi-Cal and the Healthy Families Program.

(5) The extent to which the proposal provides for coordination and conformity with existing Healthy Families Program administrative entities in order to prevent administrative duplication and fragmentation.

(6) The ability of the health care providers designated in the proposal to serve the eligible population and the extent to which the proposal includes traditional and safety net providers, as defined in regulations adopted pursuant to the Healthy Families Program.

(7) For children's coverage, the extent to which the proposal intends to work with the school districts and county offices of education.

(8) The total amount of funds available to the applicant to implement the program described in its proposal, and the percentage of this amount proposed for administrative costs as well as the cost to the state to administer the proposal.

(9) The extent to which the proposal seeks to minimize the substitution of private employer health insurance coverage for health benefits provided through a governmental source.

(10) The extent to which local resources may be available after the depletion of federal funds to continue any current program expansions for persons covered under local health care financing programs or for expanded benefits.

(11) For coverage proposals for adults, the extent to which the proposal seeks to pursue assistance from employers in the payment of premiums and whether the proposal requires, as a condition of parental enrollment, the enrollment of children in the applicant's plan or a competing plan.

(12) For coverage proposals for adults, the extent to which the proposal offers subscribers a choice of health care service plans or health insurers similar to the choices available to children eligible for the Healthy Families Program in that county.

(13) For the purposes of defining eligibility for adults, the following shall apply:

(A) The same income methodology shall be used for the proposed program that is currently used for the Medi-Cal and the Healthy Families programs.

(B) Only participating licensed Healthy Families dental, health, and vision plans may be used. However, the board may permit exceptions to this requirement consistent with the purpose, of this part.

(b) The board may, in its discretion, approve or disapprove projects for funding pursuant to this part on an annual basis.

(c) To the extent that an applicant's proposal pursuant to this part provides for health plan or administrative services under a contract entered into by the board or at rates negotiated for the applicant by the board, a contract entered into by the board or by an applicant shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services to the same extent as contracts entered into pursuant to Part 6.2 (commencing with Section 12693). The board and the applicant shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual subscriber enrollments to a total amount not to exceed the amount appropriated for the project including family contributions.

SEC. 5. Section 12699.62 of the Insurance Code is amended to read:

12699.62. (a) The provisions of this part shall be implemented only if all of the following conditions are met:

(1) Federal financial participation is available for this purpose.

(2) Federal participation is approved.

(3) The Managed Risk Medical Insurance Board determines that federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) funds remain available after providing funds for all current enrollees and eligible children and parents that are likely to enroll in the Healthy Families Program and, to the extent funded through the federal State Children's Health Insurance Program, the Access for Infants and Mothers Program and Medi-Cal program, as determined by a Department of Finance estimate. In each fiscal year, funds for adults shall only be provided to the extent that the funds are not needed for the children's expansion portion of the County Health Initiative Matching Fund.

(4) Funds are appropriated specifically for this purpose.

(b) The State Department of Health Services and the Managed Risk Medical Insurance Board may accept funding necessary for the preparation of the federal waiver applications or state plan amendments described in Section 12699.61 from a not-for-profit group or foundation.

CHAPTER 867

An act to amend, repeal, and add Sections 30142, 30168, 30181, and 30182 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 30142 of the Revenue and Taxation Code is amended to read:

30142. (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars ($1,000) shall be furnished by every distributor that is required to be licensed.

(b) If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security as follows:

(1) If a distributor elects, under Section 30168, to make payments on a monthly basis, the board shall require a security equal to not less than

70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(2) If a distributor elects, under Section 30168, to make payments on a twice-monthly basis, the board shall require a security equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

SEC. 2. Section 30142 is added to the Revenue and Taxation Code, to read:

30142. (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars ($1,000) shall be furnished by every distributor that is required to be licensed.

(b) If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(c) This section shall become operative on January 1, 2007.

SEC. 3. Section 30168 of the Revenue and Taxation Code is amended to read:

30168. (a) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis in any calendar month shall be due and payable on a monthly basis, in the manner elected pursuant to subdivision (b), during the month following the calendar month in which the stamps and meter register settings were purchased. Payment shall be made by a remittance payable to the board.

(b) A distributor shall elect to make the payment required by subdivision (a) on either a monthly or a twice-monthly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects to make the payment required by subdivision (a) on a monthly basis, the distributor shall remit the payment on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased.

(2) If a distributor elects to make the payment required by subdivision (a) on a twice-monthly basis, the distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the 5th day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

SEC. 4. Section 30168 is added to the Revenue and Taxation Code, to read:

30168. (a) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the 25th day of the following calendar month. Payment shall be made by a remittance payable to the board.

(b) This section shall become operative on January 1, 2007.

SEC. 5. Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. The return shall be filed with the board, in the manner elected by the distributor pursuant to subdivision (c), together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of

Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) A distributor shall elect to file the return and to make the payment required by subdivision (b) on either a monthly or a twice-monthly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects a monthly basis, the distributor shall file a return and remit the payment on or before the 25th day of the month following the month in which the tobacco products were distributed.

(2) If a distributor elects a twice-monthly basis, the distributor shall file two returns and make two remittances during the month following the month in which the tobacco products were distributed. The first monthly return shall be filed and the first remittance shall be made on or before the 5th day of the month for those distributions that occurred between the first day and the 15th day of the preceding month. The second monthly return shall be filed and the second remittance made on or before the 25th day of the month for those distributions that occurred between the 16th day and last day of the preceding month.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

SEC. 6. Section 30181 is added to the Revenue and Taxation Code, to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form, as prescribed by the board, which may include, but not be limited to, electronic media respecting the distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. The return

shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period.

(c) To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods.

(d) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(e) This section shall become operative on January 1, 2007.

SEC. 7. Section 30182 of the Revenue and Taxation Code is amended to read:

30182. (a) Except as provided in subdivision (b), every distributor shall file, on or before the 25th day of each month, a report in the form as prescribed by the board, that may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Every distributor that elects, pursuant to Section 30168, to make deferred payments on a twice-monthly basis shall file a report in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of cigarettes and purchases of stamps and meter register units during the month following the month in which the distribution occurred and the stamps and meter register settings were purchased, and any other information as the board may require to carry out this part. The monthly report shall be filed on or before the 5th day of the month with respect to those distributions of cigarettes and purchases of stamps and meter register settings that were made during the preceding month.

(c) Reports shall be authenticated in a form, or pursuant to, methods as may be prescribed by the board.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

SEC. 8. Section 30182 is added to the Revenue and Taxation Code, to read:

30182. (a) Every distributor shall, on or before the 25th day of each month, file a report in the form as prescribed by the board, which may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Every distributor shall, on or before the 25th day of each month, file a return, in the form as prescribed by the board, which may include, but not be limited to, electronic media, with respect to distributions of

tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part.

(c) The reports and returns required by this section shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(d) This section shall become operative on January 1, 2007.

SEC. 9. The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

CHAPTER 868

An act to add and repeal Section 7310 of the Elections Code, relating to elections.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 7310 is added to the Elections Code, to read:

7310. (a) If the Republican National Convention will conclude after the deadline for the Secretary of State to deliver certificates of nomination to local elections officials pursuant to Section 8148, the Chairperson of the Republican State Central Committee shall notify the Secretary of State of the apparent nomination of the Republican candidates for President and Vice President of the United States not less than 78 days prior to the election, if all of the following conditions apply:

(1) A candidate for President has attained a sufficient number of delegate votes to assure his or her nomination at the Republican National Convention.

(2) The candidate described in paragraph (1) has identified a person who will be nominated to run for the office of Vice President.

(3) The Republican National Convention is likely to nominate the person who is the choice of the candidate for President in the Vice Presidential nomination.

(b) The Secretary of State shall prepare the certificates of nomination required in Section 8148 to include the names of the Republican

candidates for President and Vice President as notified by the Chairperson of the Republican State Central Committee.

(c) This section shall become inoperative on December 31, 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.

CHAPTER 869

An act to add Section 25353.5 to the Health and Safety Code, and to add Section 13177.7 to the Water Code, relating to hazardous substances, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 25353.5 is added to the Health and Safety Code, to read:

25353.5. (a) (1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(b) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any direct or indirect position of the department that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for

paying the department's costs, or on any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(c) The Controller and Department of Finance shall exclude, from the department's base for purposes of calculating any budget or position reductions required by any state agency or any state law, the specific amounts and direct or indirect positions that provide oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that are funded through an agreement with a party responsible for paying the department's costs, and shall exclude the specific amounts and any direct or indirect positions that are funded by a federal grant that does not require a state match funded from the General Fund.

(d) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the department to reduce authorized positions or other appropriations for other department programs, including personal services, to replace the reductions precluded by subdivisions (a), (b), and (c).

(e) Notwithstanding any other provision of law, upon the request of the department, and upon review and approval by the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(f) (1) This section does not apply to any department appropriation or expenditure of General Fund moneys.

(2) This section does not limit the authority of the Department of Finance to eliminate a position when funding for the position, through an agreement with a party or by a federal grant, is no longer available.

SEC. 2. Section 13177.7 is added to the Water Code, to read:

13177.7. (a) (1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any direct or indirect position that provides oversight and related support of remediation at a military base, including a closed military base, that is funded without General Fund moneys through an agreement with a state agency, or that is funded through an agreement with a party responsible for paying the state board's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(2) An agreement with a state agency subject to this section may not require the use of a state matching fund from the General Fund by that agency.

(3) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, the Director of Finance may not eliminate any direct or indirect position that provides oversight and

related support of remediation at a military base, including a closed military base, that is funded through an agreement with a state agency or party responsible for paying the state board's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(b) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any direct or indirect position of the state board that provides oversight and related support of remediation at a military base, including a closed military base, that is funded through an agreement with a state agency or party responsible for paying the state board's costs, or on any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(c) The Controller and the Department of Finance shall exclude, from the state board's base for purposes of calculating any budget or position reductions required by any state agency or any state law, the specific amounts and direct or indirect positions that provide oversight and related support of remediation at a military base, including a closed military base, that are funded through an agreement with a state agency or party responsible for paying the state board's costs, and shall exclude the specific amounts and any direct or indirect positions that are funded by a federal grant that does not require a state match funded from the General Fund.

(d) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the state board to reduce authorized positions or other appropriations for other state board programs, including personal services, to replace the reductions precluded by subdivisions (a), (b), and (c).

(e) Notwithstanding any other provision of law, upon the request of the state board, and upon review and approval of the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(f) (1) This section does not apply to any state board appropriation or expenditure of General Fund moneys.

(2) This section does not limit the authority of the Department of Finance to eliminate a position when funding for the position, through an agreement with a party or by a federal grant, is no longer available.

CHAPTER 870

An act to amend Sections 1164, 1164.3, and 1164.12 of, and to repeal Section 1164.14 of, the Labor Code, relating to employment.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1164 of the Labor Code 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.

(e) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.

(3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.

(5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed.

SEC. 2. Section 1164.3 of the Labor Code 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, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of 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 1164.12 of the Labor Code is amended 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 prior to January 1, 2008. 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. 4. Section 1164.14 of the Labor Code is repealed.

CHAPTER 871

An act to amend Section 15007 of the Fish and Game Code, relating to fish.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 15007 of the Fish and Game Code is amended to read:

15007. (a) In the waters of the Pacific Ocean that are regulated by this state, it is unlawful to spawn, incubate, or cultivate any species of finfish belonging to the family Salmonidae, transgenic fish species, or any exotic species of finfish. This section does not apply to salmon or steelhead trout reared from native California stocks that are propagated and cultured for either of the following:

(1) Research conducted by, or on behalf of, the department; or

(2) Release into ocean waters for the purpose of recovery, restoration, or enhancement of California's native salmon and steelhead trout populations pursuant to Chapter 8 (commencing with Section 6900) of Part 1 of Division 6.

(b) Nothing in this section authorizes artificial propagation, rearing, or stocking of transgenic freshwater and marine fishes, invertebrates, crustaceans, or mollusks.

(c) As used in this section, ''transgenic'' has the same meaning as in Section 1.92 of Title 14 of the California Code of Regulations, as that section read on May 14, 2003.

(d) As used in this section, ''exotic species'' means a fish that is not native to California waters and that does not currently exist as a viable population in a wild condition in the state.

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 872

An act to amend Section 4458 of, and to add Sections 4459.5, 4459.6, 4459.7, and 4459.8 to, the Government Code, and to amend Sections 19954 and 19958.5 of, and to add Section 19958.6 to, the Health and Safety Code, relating to building standards, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 4458 of the Government Code is amended to read:

4458. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, or the Attorney General may bring an action to enjoin a violation of this chapter.

SEC. 2. Section 4459.5 is added to the Government Code, to read:

4459.5. The State Architect shall establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. No later than January 1, 2005, the State Architect shall determine minimum criteria a person is required to meet in order to be a certified access specialist, which may include knowledge sufficient to review, inspect, or advocate universal design requirements, completion of specified training, and testing on standards governing access to buildings for persons with disabilities.

SEC. 3. Section 4459.6 is added to the Government Code, to read:

4459.6. The State Architect shall appoint an ad hoc advisory committee to assist in developing the requirements for certification as access specialists pursuant to Section 4459.5. This committee shall include individuals with disabilities, and a representative from each of the following:

(a) The Governor.

(b) The Secretary of Health and Human Services.
(c) The Attorney General.
(d) Local government.
(e) Architects.
(f) Building inspectors.
(g) Business.

SEC. 4. Section 4459.7 is added to the Government Code, to read:

4459.7. (a) No later than October 31 of each year, the State Architect shall publish and make available to the public a list of certified access specialists who have met the requirements of Section 4459.5. This list shall include a written disclaimer of liability as specified in subdivision (b).

(b) Notwithstanding any other provision of law, a state agency or employee of a state agency may not be held liable for any injury or damages resulting from any service provided by a certified access specialist whose name appears on the list published pursuant to subdivision (a).

(c) The State Architect may perform periodic audits of work performed by a certified access specialist as deemed necessary to ensure the desired standard of performance. A certified access specialist shall provide an authorized representative of the State Architect with complete access, at any reasonable hour of the day, to all technical data, reports, records, photographs, design outlines and plans, and files used in building inspection and plan review, with the exception of proprietary and confidential information.

SEC. 5. Section 4459.8 is added to the Government Code, to read:

4459.8. (a) The certification authorized by Section 4459.5 is effective for three years from the date of initial certification and expires if not renewed. The State Architect, upon consideration of any factual complaints regarding the work of a certified access specialist or of other relevant information, may suspend certification or deny renewal of certification.

(b) The State Architect shall require each applicant for certification as a certified access specialist to pay fees, including an application and course fee and an examination fee, at a level sufficient to meet the costs of application processing, registration, publishing a list, and other activities that are reasonably necessary to implement and administer the certified access specialist program. The State Architect shall require each applicant for renewal of certification to pay a fee sufficient to cover the reasonable costs of reassessing qualifications of renewal applicants.

(c) All fees collected pursuant to this section shall be deposited into the Certified Access Specialist Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340, this fund is continuously

appropriated without regard to fiscal years for use by the State Architect to implement Sections 4459.5 to 4459.8, inclusive.

SEC. 6. Section 19954 of the Health and Safety Code is amended to read:

19954. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin any violation of this part.

SEC. 7. Section 19958.5 of the Health and Safety Code is amended to read:

19958.5. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin a violation of this part.

SEC. 8. Section 19958.6 is added to the Health and Safety Code, to read:

19958.6. (a) A person who violates Section 19952, 19955, 19955.5, 19956, 19956.5, or 19959 or any of the regulations implementing those sections that have been promulgated by the State Architect pursuant to Section 4450 of the Government Code and approved by the California Building Standards Commission shall be subject to a civil penalty of two thousand five hundred dollars ($2,500) for each violation.

(b) A person who remains in violation of the statutes and regulations specified in subdivision (a) for more than 90 days after receipt of written notice from a governmental agency identifying the violation shall be subject to an additional civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each violation for each additional day that the violation remains. In assessing the amount of the civil penalty under this subdivision, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(1) The nature and seriousness of the violations.

(2) The number of violations.

(3) The persistence of the violations.

(4) The willfulness of the defendant's conduct.

(5) The defendant's assets, liabilities, and net worth.

(6) Any economic benefit to the defendant resulting from the violation.

A court may suspend a portion of any penalty imposed pursuant to this subdivision to the extent that the person, despite diligent efforts, cannot complete all steps necessary to correct a violation within the 90-day period. Any suspension of daily penalties shall be conditioned on adherence to a court-ordered schedule for correcting the violation.

(c) When imposing penalties under either subdivision (a) or (b), the court shall impose a separate civil penalty for each violation of the statutes and implementing regulations mentioned in subdivision (a). Multiple identical violations at one facility may be deemed to constitute one violation if the court finds that the multiplicity of violations did not significantly increase the degree to which access was compromised.

(d) Every civil action brought under this section shall be brought in the name of the people of the state by the district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General. An action brought in the name of the people of the state shall not preclude an action being brought by an injured person under other applicable laws.

(e) (1) If the action is brought by the Department of Rehabilitation acting through the Attorney General, or by the Attorney General, the civil penalties shall be paid to the Treasurer. Upon prevailing, the Attorney General shall be entitled to recover all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(2) If the action is brought by the district attorney, or the county counsel, the civil penalties shall be paid to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by the city attorney, the civil penalties shall be paid to the treasurer of the city bringing the action. Upon prevailing, the city attorney shall be entitled to recover all costs of investigating and prosecuting the action, including, but not limited to, expert fees, reasonable attorney's fees, and costs.

CHAPTER 873

An act to add Section 340.8 to the Code of Civil Procedure, relating to toxic injuries.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 340.8 is added to the Code of Civil Procedure, to read:

340.8. (a) In any civil action for injury or illness based upon exposure to a hazardous material or toxic substance, the time for commencement of the action shall be no later than either two years from

the date of injury, or two years after the plaintiff becomes aware of, or reasonably should have become aware of, (1) an injury, (2) the physical cause of the injury, and (3) sufficient facts to put a reasonable person on inquiry notice that the injury was caused or contributed to by the wrongful act of another, whichever occurs later.

(b) In an action for the wrongful death of any plaintiff's decedent, based upon exposure to a hazardous material or toxic substance, the time for commencement of an action shall be no later than either (1) two years from the date of the death of the plaintiff's decedent, or (2) two years from the first date on which the plaintiff is aware of, or reasonably should have become aware of, the physical cause of the death and sufficient facts to put a reasonable person on inquiry notice that the death was caused or contributed to by the wrongful act of another, whichever occurs later.

(c) For purposes of this section:

(1) A ''civil action for injury or illness based upon exposure to a hazardous material or toxic substance'' does not include an action subject to Section 340.2 or 340.5.

(2) Media reports regarding the hazardous material or toxic substance contamination do not, in and of themselves, constitute sufficient facts to put a reasonable person on inquiry notice that the injury or death was caused or contributed to by the wrongful act of another.

(d) Nothing in this section shall be construed to limit, abrogate, or change the law in effect on the effective date of this section with respect to actions not based upon exposure to a hazardous material or toxic substance.

SEC. 2. It is the intent of the Legislature to codify the rulings in Jolly v. Eli Lilly & Co. (1988) 44 Cal.3d 1103, Norgart v. Upjohn Co. (1999) 21 Cal.4th 383, and Clark v. Baxter HealthCare Corp. (2000) 83 Cal.App.4th 1048, in subdivisions (a) and (b) of Section 340.8 of the Code of Civil Procedure, as set forth in this measure, and to disapprove the ruling McKelvey v. Boeing North American, Inc. (1999) 74 Cal.App.4th 151, to the extent the ruling in McKelvey is inconsistent with paragraph (2) of subdivision (c) of Section 340.8 of the Code of Civil Procedure, as set forth in this measure.

CHAPTER 874

An act to amend Sections 144, 473, 2307, 3740, 4980.34, 4980.40, 4980.41, 4980.50, 4980.54, 4980.80, 4984.4, 4996.1, 4996.6, 4996.17, 5801, 5810, 7069, 7607, 7631, 7632, 7649, 7706, 7725, 7887, 9653, 9719, 9768, 9788, and 22251 of, to add Sections 2029, 2488, and 9781.5 to, and to repeal and add Section 5811 of, the Business and Professions

Code, and to amend Sections 7053 and 8277 of the Health and Safety Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following :

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.

(11) Respiratory Care Board of California.

(12) Hearing Aid Dispensers Advisory Commission.

(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.

(17) State Board of Optometry.

(18) Acupuncture Board.

(19) Cemetery and Funeral Bureau.

(20) Bureau of Security and Investigative Services.

(21) Division of Investigation.

(22) Board of Psychology.

(23) The California Board of Occupational Therapy.

(24) Structural Pest Control Board.

(25) Contractors' State License Board.

(26) Bureau of Naturopathic Medicine.

(c) The provisions of paragraphs (24) and (25) of subdivision (b) shall become operative on July 1, 2004.

SEC. 2. Section 473 of the Business and Professions Code is amended to read:

473. (a) There is hereby established the Joint Legislative Sunset Review Committee.

(b) The Joint Legislative Sunset Review Committee shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall appoint the chairperson of the committee.

(c) The Joint Legislative Sunset Review Committee shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

(d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Legislative Sunset Review Committee.

(e) The Joint Legislative Sunset Review Committee is authorized to act until January 1, 2012, at which time the committee's existence shall terminate.

SEC. 3. Section 2029 is added to the Business and Professions Code, to read:

2029. The board shall keep a copy of a complaint it receives regarding the poor quality of care rendered by a licensee for 10 years from the date the board receives the complaint. For retrieval purposes, these complaints shall be filed by the licensee's name and license number.

SEC. 4. Section 2307 of the Business and Professions Code is amended to read:

2307. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the Division of Medical Quality for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the division may, for

good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the division. The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The division may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from podiatrists licensed by the board who have personal knowledge of the

activities of the petitioner since the date the disciplinary penalty was imposed.

(i) Nothing in this section shall be deemed to alter Sections 822 and 823 of the Business and Professions Code.

SEC. 4.5. Section 2488 is added to the Business and Professions Code, to read:

2488. Notwithstanding any other provision of law, the division shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine by credentialing if the applicant is licensed as a doctor of podiatric medicine in any other state and meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine.

(b) The applicant, within the past 10 years, has passed either part III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or 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 a postgraduate training program approved by the Council on Podiatric Medical Education.

(d) The applicant, within the past 10 years, has passed 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 data bank report regarding the applicant has been submitted to the board directly from the Federation of Podiatric Medical Boards.

SEC. 5. 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 an education program for respiratory care that is accredited by the Commission on Accreditation of Allied Health Education Programs and been awarded a minimum of an associate degree from an institution or

university accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

(1) Enrollment in a baccalaureate degree program in an institution or university accredited by a regional accreditation agency or association recognized by the United States Department of Education.

(2) Completion of science, general academic, and respiratory therapy coursework 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 that does not meet the requirements in subdivision (a) or (b), shall enroll in an advanced standing and approved respiratory educational program for evaluation of his or her education and training and furnish documentary evidence, satisfactory to the board, that he or she satisfies all of the following requirements:

(1) Holds an associate degree or higher level degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program equivalent to that required in subdivision (a) or (b).

(3) Possession of knowledge and skills to competently and safely practice respiratory care in accordance with national standards.

(d) Notwithstanding subdivision (c), an applicant whose application is based on education provided by a Canadian institution or university that does not meet the requirements in subdivision (a) or (b) shall furnish documentary evidence, satisfactory to the board, that he or she satisfies both of the following requirements:

(1) Holds a degree equivalent to that required in subdivision (a) or (b).

(2) Completion of a respiratory therapy educational program recognized by the Canadian Board of Respiratory Care.

(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, including modalities and advancements in technology, received by the applicant or the courses were not equivalent to that required by the board.

SEC. 6. 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 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. 7. 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 board administered written or oral examination or both examinations. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

(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. 8. Section 4980.41 of the Business and Professions Code is amended to read:

4980.41. All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (g) of Section 4980.40:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(e) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

SEC. 9. 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

(g) 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.

(h) 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. 10. 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 as specified in subdivision (g) of Section 4980.40 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. 11. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. The board may issue a license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified by subdivision (g) of Section 4980.40 and pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e) (1) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(2) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(f) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(g) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(h) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

SEC. 12. Section 4984.4 of the Business and Professions Code is amended to read:

4984.4. A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the licensee may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(c) He or she takes and passes the current licensing examinations as specified in subdivision (g) of Section 4980.40.

SEC. 13. Section 4996.1 of the Business and Professions Code is amended to read:

4996.1. The board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and successfully passes a board administered written or oral examination or both examinations. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.

SEC. 14. Section 4996.6 of the Business and Professions Code is amended to read:

4996.6. (a) The renewal fee for licenses that expire on or after January 1, 1996, shall be a maximum of one hundred fifty-five dollars ($155) and shall be collected on a biennial basis by the board in accordance with Section 152.6. The fees shall be deposited in the State Treasury to the credit of the Behavioral Sciences Fund.

(b) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(c) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4996.22.

(4) Notify 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 licensee's last renewal.

(d) If the license is renewed after its expiration, the licensee shall, as a condition precedent to renewal, also pay a delinquency fee of seventy-five dollars ($75).

(e) Any person who permits his or her license to become delinquent may have it restored at any time within five years after its expiration upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of all delinquency fees.

(f) A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter; however, the licensee may apply for and obtain a new license if:

(1) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(2) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(3) He or she takes and passes the current licensing examinations as specified in Section 4996.1.

(g) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(h) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

SEC. 15. Section 4996.17 of the Business and Professions Code is amended to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter. The board may issue a license to any person who, at the time of application, has held a valid license, issued by a board of clinical social work examiners or corresponding authority of any state, for two years if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon the person's completion of the following coursework and training:

(1) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(4) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(B) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(5) With respect to paragraphs (2), (3), and (4), the board may accept training or coursework acquired out of state.

(b) A person who qualifies for licensure based on experience gained outside California may apply for and receive an associate registration to practice clinical social work.

SEC. 16. Section 5801 of the Business and Professions Code is amended to read:

5801. A certified interior designer may obtain a stamp from an interior design organization that shall include a number that uniquely identifies and bears the name of that certified interior designer. The stamp certifies that the interior designer has provided the interior design organization with evidence of passage of an interior design examination approved by that interior design organization and any of the following:

(a) He or she is a graduate of a four or five-year accredited interior design degree program, and has two years of diversified interior design experience.

(b) He or she has completed a three-year accredited interior design certificate program, and has completed three years of diversified interior design experience.

(c) He or she has completed a two-year accredited interior design program and has completed four years of diversified interior design experience.

(d) He or she has a combination of interior design education and diversified interior design experience that together total at least eight years.

SEC. 17. Section 5810 of the Business and Professions Code is amended to read:

5810. (a) This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

(b) This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 18. Section 5811 of the Business and Professions Code is repealed.

SEC. 19. Section 5811 is added to the Business and Professions Code, to read:

5811. An interior design organization issuing stamps under Section 5801 shall provide to the Joint Legislative Sunset Review Committee by September 1, 2005, a report that reviews and assesses the costs and benefits associated with the California Code and Regulations Examination and explores feasible alternatives to that examination.

SEC. 20. Section 7069 of the Business and Professions Code is amended to read:

7069. (a) An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes that are grounds for denial of licensure under Section 480.

(b) As part of an application for a contractor's license, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format if readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, and the board may obtain any subsequent arrest information that is available. This subdivision shall become operative on July 1, 2004.

SEC. 21. Section 7607 of the Business and Professions Code is amended to read:

7607. The bureau may inspect the premises in which the business of a funeral director is conducted, where embalming is practiced, or where human remains are stored.

SEC. 22. Section 7631 of the Business and Professions Code is amended to read:

7631. In case of the death of a licensed funeral director who leaves a funeral establishment as part or all of the assets of his or her estate, the bureau may issue a temporary license to his or her legal representative, unless the legal representative has committed acts or crimes constituting grounds for denial of licensure under Section 480. A temporary establishment license is valid for six months from the date of issue. However, upon the petition of the estate's legal representative, the bureau, in its discretion, may grant a reasonable extension to allow for the assets of the estate to be distributed as circumstances warrant.

SEC. 23. Section 7632 of the Business and Professions Code is amended to read:

7632. Every funeral director shall cause all human remains embalmed in or at the direction of his or her funeral establishment to be

embalmed by a licensed embalmer, or by an apprentice embalmer under the supervision of his or her licensed supervising embalmer.

SEC. 24. Section 7649 of the Business and Professions Code is amended to read:

7649. Except as provided in Section 102805 of the Health and Safety Code, whenever the name of any licensed embalmer is subscribed to any certificate, the purport of which is that he or she has performed any act mentioned in the certificate, the licensed embalmer shall actually sign his or her name thereto.

SEC. 25. Section 7706 of the Business and Professions Code is amended to read:

7706. Refusing to surrender promptly the custody of human remains, the personal effects, and any certificate or permit required under Division 102 (commencing with Section 102100) of the Health and Safety Code that is in the possession or control of the licensee upon the express order of the person lawfully entitled to custody of the human remains constitutes a ground for disciplinary action.

SEC. 26. Section 7725 of the Business and Professions Code is amended to read:

7725. A license issued under this chapter shall expire each year on the last day of the month in which the license was originally issued. To renew an unexpired license, the licenseholder shall on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the bureau, and pay the renewal fee prescribed by this chapter.

The bureau shall mail to each licensed funeral establishment, funeral director, and embalmer, addressed to him or her at his or her address of record, a notice that a renewal fee is due and payable.

SEC. 27. Section 7887 of the Business and Professions Code is amended to read:

7887. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for registration as a geologist or a geophysicist or certification as a specialty geologist or a specialty geophysicist and for administration of the examination at not more than two hundred and fifty dollars ($250).

(b) The registration fee for a geologist or for a geophysicist and the fee for the certification in a specialty shall be fixed at an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, with respect to certificates that will expire less than one year after issuance, the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The board may, by appropriate regulation, provide for the waiver or

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

(c) The duplicate certificate fee at not more than six dollars ($6).

(d) The temporary registration fee for a geologist or for a geophysicist at not more than eighty dollars ($80).

(e) The renewal fee for a geologist or for a geophysicist shall be fixed by the board at not more than four hundred dollars ($400).

(f) The renewal fee for a specialty geologist or for a specialty geophysicist at not more than one hundred dollars ($100).

(g) Notwithstanding Section 163.5, the delinquency fee for a certificate is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date.

(h) Each applicant for registration as a geologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board for the purchase of a national examination for geologists created by a nationally recognized entity approved by the board, including a supplemental California specific examination, and shall not exceed three hundred dollars ($300).

(i) Each applicant for registration as a geophysicist or certification as an engineering geologist or certification as a hydrogeologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board for the development and maintenance of the written examination, and shall not exceed one hundred dollars ($100).

SEC. 28. Section 9653 of the Business and Professions Code is amended to read:

9653. (a) In making the examination the bureau:

(1) Shall have free access to the books and records relating to the trust funds, their collection and investment, and the number of graves, crypts, and niches under endowment care.

(2) Shall inspect and examine the trust funds to determine their condition and the existence of the investments.

(3) Shall ascertain if the cemetery corporation has complied with all the laws applicable to trust funds.

(b) Upon request by the bureau, a cemetery authority shall provide records to substantiate the expenditures of the income of the trust funds. If a cemetery authority fails to reasonably comply with this request, the bureau may have access to books, records, and accounts of a cemetery authority for purposes of ascertaining compliance with applicable laws.

SEC. 29. Section 9719 of the Business and Professions Code is amended to read:

9719. The bureau shall inspect the books, records, and premises of any crematory licensed under this chapter. In making those inspections, the bureau shall have access to all books and records, the crematory building, the cremation chambers or furnaces, and the storage areas for

human remains before and after cremation, during regular office hours or the hours the crematory is in operation. No prior notification of the inspection is required to be given to the crematory licensee. If any crematory licensee fails to allow that inspection or any part thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee. All proceedings under this section shall be conducted in accordance with the provisions of this chapter relating to disciplinary proceedings.

SEC. 30. Section 9768 of the Business and Professions Code is amended to read:

9768. It is a misdemeanor for any cemetery corporation to make any interments without a valid certificate of authority. Each interment shall be a separate violation.

SEC. 31. Section 9781.5 is added to the Business and Professions Code, to read:

9781.5. The provisions of Article 5 (commencing with Section 8340) of Chapter 2 of Part 3 of Division 8 of the Health and Safety Code shall apply to crematories licensed under this chapter.

SEC. 32. Section 9788 of the Business and Professions Code is amended to read:

9788. It is a misdemeanor for any person, firm, or corporation to cremate human remains or to engage in the disposition thereof without a valid, unexpired crematory license. Each cremation shall be a separate violation.

SEC. 33. Section 22251 of the Business and Professions Code is amended to read:

22251. For the purposes of this chapter, the following words have the following meanings:

(a) (1) Except as otherwise provided in paragraph (2), ''tax preparer'' includes:

(A) A person who, for a fee or for other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this chapter, irrespective of affiliation with, or employment by, another tax preparer.

(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted under Section 22258, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

(2) Notwithstanding paragraph (1), ''tax preparer'' does not include an employee who, as part of the regular clerical duties of his or her

employment, prepares his or her employer's income, sales, or payroll tax returns.

(b) ''Tax return'' means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes or state bank and corporation franchise taxes.

(c) An ''approved curriculum provider,'' for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the council as defined in subdivision (d). A curriculum provider who is approved by the tax education council is exempt from Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code.

(d) ''Council'' means the California Tax Education Council that is a single organization made up of not more than one representative from each professional society, association, or other entity operating as a nonprofit corporation that chooses to participate in the council and that represents tax preparers, enrolled agents, attorneys, or certified public accountants with a membership in California of at least 200 for the last three years, and not more than one representative from each for-profit tax preparation corporation that chooses to participate in the council and that has at least 200 employees and has been operating in California for the last three years. The council shall establish a process by which two individuals who are tax preparers pursuant to Section 22255 are appointed to the council with full voting privileges to serve terms as determined by the council, with their initial terms being served on a staggered basis. A person exempt from the requirements of this chapter pursuant to Section 22258 is not eligible for appointment to the council, other than an employee of an individual in an exempt category.

SEC. 34. Section 7053 of the Health and Safety Code is amended to read:

7053. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, or fails to release any human remains, the personal effects, or any certificate or permit required under Division 102 (commencing with Section 102100) that is in his or her possession or control forthwith upon the delivery of authorization for the release signed by the next of kin or by any person entitled to the custody of the remains, is guilty of a misdemeanor.

SEC. 35. Section 8277 of the Health and Safety Code is amended to read:

8277. Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesperson, which provides for the sale by the cemetery authority of an interment plot or

any service or merchandise, shall be in writing and shall contain all of the agreements of the parties. The contract shall include and disclose the following:

(a) The total contract price.

(b) Terms of payment, including any promissory notes or other evidences of indebtedness.

(c) An itemized statement of charges including, as applicable, the following:

(1) Charges for an interment plot.

(2) Charges for performing burial, entombment, or inurnment.

(3) Charges for a monument or marker.

(4) Charges for any services to be rendered in connection with any religious or other observance at the site of interment or in any facility maintained by the cemetery.

(5) Amounts to be deposited in any endowment care or special care fund.

(6) Charges for any insurance to be provided in connection with the contract.

(7) Any other charges, which shall be particularized.

(8) Space and location sold.

SEC. 36. 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 875

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.

(2) Promote uniform and consistent application of the act among the counties within the state.

(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.

(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

(a) ''Attending physician'' means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) ''Department'' means the State Department of Health Services.

(c) ''Person with an identification card'' means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) ''Primary caregiver'' means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) ''Qualified patient'' means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) ''Identification card'' means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) ''Serious medical condition'' means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) ''Written documentation'' means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to

have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject

to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

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

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an

amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.

CHAPTER 876

An act to amend Sections 25533, 25533.5, and 29544 of the Corporations Code, to amend Sections 3309.5, 11180.5, 11181, 11183, 11184, 11185, 11186, 11187, and 11188 of, and to add Article 10 (commencing with Section 12657) to Chapter 6 of Part 2 of Division 3 of Title 2 of, the Government Code, and to add Section 131 to the Penal Code, relating to investigations.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 25533 of the Corporations Code is amended to read:

25533. The commissioner may refer any evidence available concerning any violation of this law or of any rule or order hereunder to the Attorney General or the district attorney of the county in which the violation occurred, who may, with or without this type of a reference, institute appropriate criminal proceedings under this law. The commissioner and his or her counsel, deputies, or assistants may, upon request of the Attorney General or the district attorney, assist the prosecuting attorney in presenting the law or facts at the trial.

SEC. 2. Section 25533.5 of the Corporations Code is amended to read:

25533.5. The commissioner shall send a copy of a desist and refrain order issued under this law to the Attorney General and the district attorney of the county in which the person who is the subject of the order resides or maintains a principal place of business. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the department and its employees, the commissioner, the members of the commissioner's staff, or the commissioner's authorized representatives for the failure to provide to the Attorney General or the district attorney a copy of the order as required by this section.

SEC. 3. Section 29544 of the Corporations Code is amended to read:

29544. (a) Any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall be liable for a civil penalty not to exceed twenty-five thousand dollars

($25,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

The penalty collected shall be paid to the State Corporations Fund to be used for the support of this division.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce this division.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

SEC. 4. 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) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) 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.

(d) (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.

(e) 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.

SEC. 5. Section 11180.5 of the Government Code is amended to read:

11180.5. At the request of a prosecuting attorney or the Attorney General, any agency, bureau, or department of this state, any other state, or the United States may assist in conducting an investigation of any unlawful activity that involves matters within or reasonably related to the jurisdiction of the agency, bureau, or department. This investigation may be made in cooperation with the prosecuting attorney or the Attorney General. The prosecuting attorney or the Attorney General may disclose documents or information acquired pursuant to the investigation to another agency, bureau, or department if the agency, bureau, or department agrees to maintain the confidentiality of the documents or information received to the extent required by this article.

SEC. 6. Section 11181 of the Government Code is amended to read:

11181. In connection with any investigation or action authorized by this article, the department head may do any of the following:

(a) Inspect and copy books, records, and other items described in subdivision (e).

(b) Hear complaints.

(c) Administer oaths.

(d) Certify to all official acts.

(e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

(f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.

(g) Divulge information or evidence related to the investigation of unlawful activity discovered from interrogatory answers, papers, books, accounts, documents, and any other item described in subdivision (e), or testimony, to the Attorney General or to any prosecuting attorney of this state, any other state, or the United States who has a responsibility for investigating the unlawful activity investigated or discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity investigated or discovered, if the Attorney General, prosecuting attorney, or agency to which the information or evidence is divulged agrees to maintain the confidentiality of the information received to the extent required by this article.

(h) Present information or evidence obtained or developed from the investigation of unlawful activity to a court or at an administrative hearing in connection with any action or proceeding.

SEC. 7. Section 11183 of the Government Code is amended to read:

11183. Except in a report to the head of the department or when called upon to testify in any court or proceeding at law or as provided in Section 11180.5 or subdivisions (g) and (h) of Section 11181, an officer shall not divulge any information or evidence acquired by the officer from the interrogatory answers or subpoenaed private books, documents, papers, or other items described in subdivision (e) of Section 11181 of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person. An officer who divulges information or evidence in violation of this section is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

SEC. 8. Section 11184 of the Government Code is amended to read:

11184. (a) In any hearing in any part of the state or in any investigation conducted under this article, the head of the department shall issue process and subpoenas in a manner consistent with the California Constitution and the United States Constitution, and the process and subpoenas shall be served in the same manner as provided for the service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Service of process and subpoenas may be effectuated by any person designated for that purpose by the head of the department. The person serving any process or a subpoena may receive compensation as is allowed by the head of the department not to exceed the fees prescribed by law for similar service. This compensation shall be paid in the manner provided in this article for the payment of the fees of witnesses.

(b) If the subpoena requires oral testimony from a witness who is not a natural person, the subpoena shall describe, with reasonable particularity, the matters on which examination is requested. In that event, the subpoenaed witness shall designate and produce at the hearing those natural persons who are most qualified to testify on behalf of the subpoenaed witness about those matters to the extent of any information known or reasonably available to the subpoenaed witness. The subpoena shall notify the witness named in the subpoena of its duty to designate and produce natural persons to testify as described in this subdivision.

SEC. 9. Section 11185 of the Government Code is amended to read:

11185. (a) If the witness named in the subpoena is a natural person, the person is not obliged to attend as a witness in any matter under this article at a place out of the county in which he or she resides, unless the distance is less than 75 miles from his or her place of residence.

(b) If the witness named in the subpoena is not a natural person and has an office within this state, the subpoena may provide that the testimony of the persons designated to appear on behalf of the witness, as described in subdivision (b) of Section 11184, shall be given in the county in which the witness named in the subpoena has its principal executive or business office in this state or within 150 miles of that location.

(c) If the witness conducts business in this state but does not reside or have an office within this state, the subpoena may provide that oral testimony shall be given at a location that is within 75 miles of the residence or executive or business office of the witness.

(d) If the witness does not reside, have an office, or conduct business in this state, the testimony shall be given and documents and other items produced at a location set by a court.

(e) The department head may require any person who resides or conducts business in this state to produce the documents and other items described in subdivision (e) of Section 11181 at a location in the county in which the department head or the Attorney General maintains an office.

(f) Nothing in this section prevents the department head and subpoenaed person from agreeing that testimony may be given or production made at any location.

SEC. 10. Section 11186 of the Government Code is amended to read:

11186. The superior court in the county in which any hearing is held or any investigation is conducted under the direction of the head of a department or the county in which testimony is designated to be given or documents or other items are designated to be produced, has jurisdiction to compel the attendance of witnesses, the giving of testimony, the answering without objection of interrogatories, and the

production, inspection, and copying of papers, books, accounts, documents, and other items described in subdivision (e) of Section 11181 as required by any subpoena issued by the department head.

SEC. 11. Section 11187 of the Government Code is amended to read:

11187. (a) Except as provided in subdivision (c), if any witness refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 required by subpoena, the head of the department may petition the superior court in the county in which the hearing or investigation is pending or the county in which testimony is designated in the subpoena to be given or documents or other items are designated in the subpoena to be produced, for an order compelling the person to answer the interrogatories or to attend and testify or produce and permit the inspection and copying of the papers or other items required by the subpoena before the officer named in the subpoena.

(b) The petition shall set forth all of the following:

(1) That due notice of the time and place for answering the interrogatories or testifying or the attendance of the person or the production of the papers or other items described in subdivision (e) of Section 11181 was given.

(2) That the person was subpoenaed or required to answer interrogatories in the manner prescribed in this article.

(3) That the person failed and refused to answer the interrogatories or to attend or testify or produce or permit the inspection or copying of the papers or other items required by subpoena before the officer in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him or her in the course of the investigation or hearing.

(c) If the witness named in the subpoena does not reside or conduct business in this state, the department head may seek to compel the witness' testimony and production, inspection, and copying of documents or other items described in subdivision (e) of Section 11181 in the manner provided for the enforcement of a deposition notice to a nonparty as described in Section 2026 or 2027 of the Code of Civil Procedure or in any other manner authorized by any law.

(d) If any witness objects and based on that objection refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 as required by a subpoena, the witness shall state the objection and the validity of the objection shall be determined exclusively in a proceeding brought by the head of the department to compel compliance as provided in this section.

SEC. 12. Section 11188 of the Government Code is amended to read:

11188. Upon the filing of the petition the court shall enter an order directing the person to appear before the court at a specified time and place and then and there show cause why he or she has not attended, testified, answered interrogatories, or produced or permitted the inspection or copying of the papers or other items described in subdivision (e) of Section 11181 as required. A copy of the order shall be served upon him or her in the manner provided for the service of a summons described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. If it appears to the court that the subpoena was regularly issued, or the interrogatories were regularly promulgated, by the head of the department, the court shall enter an order that the person appear before the officer named in the subpoena at the time and place fixed in the order and testify or produce and permit the inspection and copying of the required papers or other items described in subdivision (e) of Section 11181 as required or answer the interrogatories without objection. At the request of the department head, the court may issue any additional order to aid the implementation of the order enforcing compliance with the subpoena, including the issuance of a commission or letters rogatory in the manner provided for the enforcement of a deposition notice to a nonparty as described in Section 2026 or 2027 of the Code of Civil Procedure. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

SEC. 13. Article 10 (commencing with Section 12657) is added to Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 10. Securities and Commodities

12657. For purposes of this article, the following terms shall have the following meanings:

(a) ''Securities law'' shall mean the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) and any other rule or order issued by the Commissioner of Corporations under this law.

(b) ''Commodities law'' shall mean the California Commodity Law of 1990 (Division 4.5 (commencing with Section 29500) of Title 4 of the Corporations Code) and any other rule or order issued by the Commissioner of Corporations under this law.

12658. (a) Whenever it appears to the Attorney General that any person has engaged or is about to engage in any act or practice constituting a violation of the securities law or the commodities law, the Attorney General may, in his or her discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with the securities

law or the commodities law. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the Attorney General, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the Attorney General determines it is in the public interest, the Attorney General may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) In any case in which a defendant is ordered by the court to pay restitution to a victim, the court may in its order require the payment as a money judgment, which shall be enforceable by a victim as if the restitution order were a separate civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Any order issued under this subdivision shall contain provisions that are designed to achieve a fair and orderly satisfaction of the judgment.

12659. (a) The Attorney General, in his or her discretion, (1) may make public or private investigations within or outside of this state that the Attorney General deems necessary to determine whether any person has violated or is about to violate the securities law or the commodities law or to aid in the enforcement of these laws or in the prescribing of rules and forms by the Commissioner of Corporations under these laws, and (2) may publish information concerning any violation of the securities law or the commodities law.

(b) In making any investigation authorized by subdivision (a), the Attorney General may, for a reasonable time not exceeding 30 days, take possession of the books, records, accounts, and other papers pertaining to the business of any broker-dealer or investment adviser and place a keeper in exclusive charge of them in the place where they are usually kept. During this possession no person shall remove or attempt to

remove any of the books, records, accounts, or other papers except pursuant to a court order or with the consent of the Attorney General, but the directors, officers, partners, and employees of the broker-dealer or investment adviser may examine them, and employees shall be permitted to make entries therein reflecting current transactions.

(c) For the purpose of any investigation or proceeding under the securities law or the commodities law, the Attorney General or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the Attorney General deems relevant or material to the inquiry.

(d) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the Attorney General, may issue to the person an order requiring him or her to appear before the Attorney General, or the officer designated by the Attorney General, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(e) No person is excused from attending and testifying or from producing any document or record before the Attorney General, or in obedience to the subpoena of the Attorney General or any officer designated by him or her, or in any proceeding instituted by the Attorney General, on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after validly claiming his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that an individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

12660. (a) Any person who violates any provision of the securities law or the commodities law shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of the securities law or the commodities law, the remedies provided by this section and by other sections of this article are not exclusive, and may be sought and employed in any combination to enforce the provisions of this article.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

12661. (a) The Attorney General may take any actions as are authorized by Section 6d of the federal Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) as amended before or after the effective date of this section.

(b) Nothing in this article shall be construed as a limitation on the powers of the Attorney General under this division or any other law administered by the Attorney General.

SEC. 14. Section 131 is added to the Penal Code, to read:

131. Every person in any matter under investigation for a violation of the Corporate Securities Law of 1968 (Part 1 (commencing with Section 25000) of Division 1 of Title 4 of the Corporations Code), the California Commodity Law of 1990 (Chapter 1 (commencing with Section 29500) of Division 4.5 of Title 4 of the Corporations Code), Section 16755 of the Business and Professions Code, or in connection with an investigation conducted by the head of a department of the State of California relating to the business activities and subjects under the jurisdiction of the department, who knowingly and willfully falsifies, misrepresents, or conceals a material fact or makes any materially false, fictitious, misleading, or fraudulent statement or representation, and any person who knowingly and willfully procures or causes another to violate this section, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that imprisonment and fine for each violation of this section. This section does not apply to conduct charged as a violation of Section 118 of this code.

SEC. 15. The addition of Article 10 (commencing with Section 12657) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code is intended to provide the Attorney General with concurrent enforcement powers that the Commissioner of Corporations is authorized to use to enforce current securities and commodities laws. This concurrent power is designed to enhance accountability and deter fraud in the state's investment marketplace.

SEC. 16. The investigation and enforcement of the provisions contained in Sections 1 to 15, inclusive, of this act shall be accomplished without any duplication of effort on the part of the Attorney General and the Commissioner of Corporations. To the extent that the Attorney General exercises this authority, it shall be done using existing resources, and no future budget augmentations shall be made for this purpose.

SEC. 17. The amendment of Sections 11180.5 and 11181 of the Government Code made by this act does not constitute a change in, but is declaratory of, existing law.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 877

An act to amend Sections 1299.7 and 1299.9 of the Code of Civil Procedure, relating to public employment relations.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1299.7 of the Code of Civil Procedure is amended to read:

1299.7. (a) The arbitration panel shall mail or otherwise deliver a copy of the decision to the parties. However, the decision of the arbitration panel shall not be publicly disclosed, and shall not be binding, for a period of five days after service to the parties. During that five-day period, the parties may meet privately, attempt to resolve their differences and, by mutual agreement, amend or modify the decision of the arbitration panel.

(b) At the conclusion of the five-day period, which may be extended by the parties, the arbitration panel's decision, as may be amended or modified by the parties pursuant to subdivision (a), shall be publicly disclosed and, unless the governing body acts in accordance with subdivision (c), shall be binding on all parties, and, if specified by the arbitration panel, be incorporated into and made a part of any existing memorandum of understanding as defined in Section 3505.1 of the Government Code.

(c) The employer may by unanimous vote of all the members of the governing body reject the decision of the arbitration panel, except as specifically provided to the contrary in a city, county, or city and county charter with respect to the rejection of an arbitration award.

SEC. 2. Section 1299.9 of the Code of Civil Procedure is amended to read:

1299.9. (a) The provisions of this title shall not apply to any employer that is a city, county, or city and county, governed by a charter that was amended prior to January 1, 2004, to incorporate a procedure requiring the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment within the scope of arbitration to an impartial and experienced neutral person or panel for final and binding determination, provided however that the charter amendment is not subsequently repealed or amended in a form that would no longer require the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment within the scope of arbitration to an impartial and experienced neutral person or panel, for final and binding determination.

(b) Unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization.

SEC. 3. (a) The Legislature finds and declares all of the following:

(1) Existing law declares that local government boards, councils, and other public agencies exist to aid in the conduct of the people's business and that their actions in the conduct of that business be taken openly and their deliberation on matters effecting that business be conducted openly.

(2) Existing law declares that the people in delegating authority to local government boards, councils, and other public agencies, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know, and existing law also declares that the people insist the local government actions be taken openly and deliberations of local government be conducted openly.

(3) Existing law authorizes local government to provide for the compensation of its employees. The people have an interest in how local government boards, councils, and other public agencies implement that authority.

(b) It is the intent of the Legislature in enacting this act to do all of the following:

(1) Ensure that where representatives of local government employers and firefighters or law enforcement officer employees have exhausted their mutual efforts to reach agreement over compensation issues, the people are informed of how local government boards, councils, and other public agency employers use that authority given them by law to resolve the dispute and relieve the impasse.

(2) Establish procedures by which notice of the impasse will come before local government boards, councils, and other public agencies in

an open and public manner and to establish procedures whereby those boards, councils, and other public agencies will be required to deliberate openly alternative actions designed to resolve the dispute and relieve the impasse.

(3) Further, the public interest in open government by requiring local government boards, councils, and other public agencies, which are employers of firefighters and law enforcement officers, to conduct an open proceeding at which they may choose to adopt procedures to resolve the dispute and relieve the impasse and to debate and deliberate publicly alternatives available to them.

(4) Make Title 9.5 (commencing with Section 1299) of Part 3 of the Code of Civil Procedure consistent with the decision of the California Supreme Court in County of Riverside v. Superior Court (2003) 30 Cal.4th 278.

CHAPTER 878

An act to amend Section 1798.24b of the Civil Code, and to amend Sections 4514.3, 4900, 4901, 4902, 4903, 4905, and 5328.06 of, and to add Section 4906 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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 protection and advocacy systems are federally mandated disability rights agencies established under federal law to provide advocacy services to people with disabilities.

(2) California designated a protection and advocacy agency in 1978, the purpose of which was limited to serving persons with developmental disabilities.

(3) Since that time, the federal mandate of the protection and advocacy systems has expanded to include anyone with a disability as defined under federal law.

(4) Under federal law, the protection and advocacy agencies must have authority to investigate incidents of abuse or neglect and otherwise protect the legal and civil rights of people with disabilities through its federally mandated activities. In providing its mandated services, the agencies must also have access to locations in which services, supports,

and other assistance are provided, access to people with disabilities eligible for services, and access to records under conditions specified in federal law.

(5) The federal law related to protection and advocacy systems is contained in various statutes and regulations which, despite some variations in language, are intended to be read to result in the provision of consistent services to all persons with disabilities eligible for protection and advocacy agency services.

(6) State law has not been amended to reflect changes in federal law.

(7) Because of the multiple federal statutory and regulatory schemes pertaining to protection and advocacy agencies, and because state law is outdated, confusion has resulted in delays of abuse and neglect investigations and delays in the provision of other mandated services. On occasion, delays have hampered the ability of the state's protection and advocacy agency to timely investigate incidents of suspected abuse or neglect, including incidents resulting in death, until the agency was able to enforce its authority under federal law.

(8) State law may not, however, diminish the authority of the protection and advocacy agency under federal law.

(9) Moreover, it is in the interest of people with disabilities in California that protection and advocacy services be available to all people with disabilities who may be subject to abuse or neglect or who request or require the advocacy services of the protection and advocacy agency.

(b) The Legislature further finds and declares that enactment of this act would do both of the following:

(1) Ensure that protection and advocacy agency services are available to all persons with disabilities as defined in state law, even if state law defines disability in a manner that is broader than the definition of disability under federal law.

(2) Delineate the authority of the protection and advocacy agency in a manner that will clarify the agency's authority and provide the agency in state law with the authority established under federal law, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the PADD Act), the Protection and Advocacy for Individuals with Mental Illness Act (the PAIMI Act), and the Protection and Advocacy of Individual Rights Act (the PAIR Act).

SEC. 2. Section 1798.24b of the Civil Code is amended to read:

1798.24b. (a) Notwithstanding Section 1798.24, except subdivision (v) thereof, information shall be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate for the rights of people with disabilities, as described in Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.

(b) Information that shall be disclosed pursuant to this section includes all of the following information:

(1) Name.

(2) Address.

(3) Telephone number.

(4) Any other information necessary to identify that person whose consent is necessary for either of the following purposes:

(A) To enable the protection and advocacy agency to exercise its authority and investigate incidents of abuse or neglect of people with disabilities.

(B) To obtain access to records pursuant to Section 4903 of the Welfare and Institutions Code.

SEC. 3. Section 4514.3 of the Welfare and Institutions Code is amended to read:

4514.3. (a) Notwithstanding Section 4514, information and records shall be disclosed to the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

SEC. 4. Section 4900 of the Welfare and Institutions Code is amended to read:

4900. (a) The definitions contained in this section shall govern the construction of this division, unless the context requires otherwise. These definitions shall not be construed to alter or impact the definitions or other provisions of the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(b) ''Abuse'' means an act, or failure to act, that would constitute abuse as that term is defined in federal regulations pertaining to the authority of protection and advocacy agencies, including Section 51.2 of Title 42 of the Code of Federal Regulations or Section 1386.19 of Title 45 of the Code of Federal Regulations. ''Abuse'' also means an act, or failure to act, that would constitute abuse as that term is defined in Section 15610.07 of the Welfare and Institutions Code or Section 11165.6 of the Penal Code.

(c) ''Complaint'' has the same meaning as ''complaint'' as defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(1) of Title 42 of the

United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations.

(d) ''Disability'' means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as defined in Section 12102(2) of Title 42 of the United States Code, or a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(e) ''Facility'' or ''program'' means a public or private facility or program providing services, support, care, or treatment to persons with disabilities, even if only on an as-needed basis or under contractual arrangement. ''Facility'' or ''program'' includes, but is not limited to, a hospital, a long-term health care facility, a community living arrangement for people with disabilities, including a group home, a board and care home, an individual residence or apartment of a person with a disability where services are provided, a day program, a juvenile detention facility, a homeless shelter, a jail, or a prison, including all general areas, as well as special, mental health, or forensic units. The term includes any facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code and any facility that is unlicensed but is not exempt from licensure as provided in subdivision (a) of Section 1503.5 of the Health and Safety Code. The term also includes a public or private school or other institution or program providing education, training, habilitation, therapeutic, or residential services to persons with disabilities.

(f) ''Legal guardian,'' ''conservator,'' or ''legal representative,'' means a person appointed by a state court or agency empowered under state law to appoint and review the legal guardian, conservator, or legal representative, as appropriate. With respect to an individual described under paragraph (2) of subdivision (i), this person is one who has the legal authority to consent to health or mental health care or treatment on behalf of the individual. With respect to an individual described under paragraphs (1) or (3) of subdivision (i), this person is one who has the legal authority to make all decisions on behalf of the individual. These terms include the parent of a minor who has legal custody of the minor. These terms do not include a person acting solely as a representative payee, a person acting solely to handle financial matters, an attorney or other person acting on behalf of an individual with a disability solely in individual legal matters, or an official or his or her designee who is

responsible for the provision of treatment or services to an individual with a disability.

(g) ''Neglect'' means a negligent act, or omission to act, that would constitute neglect as that term is defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(5) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations. ''Neglect'' also means a negligent act, or omission to act, that would constitute neglect as that term is defined in subdivision (b) of Section 15610.07 of the Welfare and Institutions Code or Section 11165.2 of the Penal Code.

(h) ''Probable cause'' to believe that an individual has been subject to abuse or neglect, or is at significant risk of being subjected to abuse or neglect, exists when the protection and advocacy agency determines that it is objectively reasonable for a person to entertain that belief. The individual making a probable cause determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions, or problems that are usually associated with abuse or neglect. Information supporting a probable cause determination may result from monitoring or other activities, including, but not limited to, media reports and newspaper articles.

(i) ''Protection and advocacy agency'' means the private nonprofit corporation designated by the Governor in this state pursuant to federal law for the protection and advocacy of the rights of persons with disabilities, including the following:

(1) People with developmental disabilities, as authorized under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code.

(2) People with mental illness, as authorized under the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code.

(3) People with disabilities within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) as defined in Section 12102(2) of Title 42 of the United States Code, who do not have a developmental disability as defined in Section 15002(8) of Title 42 of the United States Code, people with a mental illness as defined in Section 10802(4) of Title 42 of the United States Code, and who are receiving services under the federal Protection and Advocacy of Individual Rights Act as defined in Section 794e of Title 29 of the United States Code, or people with a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing

with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(j) ''Reasonable unaccompanied access'' means access that permits the protection and advocacy agency, without undue interference, to monitor, inspect, and observe conditions in facilities and programs, to meet and communicate with residents and service recipients privately and confidentially on a regular basis, formally or informally, by telephone, mail, electronic mail, and in person, and to review records privately and confidentially, in a manner that minimizes interference with the activities of the program or service, that respects residents' privacy interests and honors a resident's request to terminate an interview, and that does not jeopardize the physical health or safety of facility or program staff, residents, service recipients, or protection and advocacy agency staff.

SEC. 5. Section 4901 of the Welfare and Institutions Code is amended to read:

4901. (a) The protection and advocacy agency, for purposes of this division, shall be a private nonprofit corporation and shall meet all of the requirements of federal law applicable to protection and advocacy systems, including, but not limited to, the requirement that it establish a grievance procedure for clients or prospective clients of the system to ensure that people with disabilities have full access to services of the system.

(b) State officers and employees, in taking any action relating to the protection and advocacy agency, shall meet the requirements of federal law applicable to protection and advocacy systems.

(c) The authority of the protection and advocacy agency set forth in this division shall not diminish the authority of the protection and advocacy agency under federal statutes pertaining to the authority of protection and advocacy systems, or under federal rules and regulations adopted in implementation of those statutes.

(d) Nothing in this division shall be construed to supplant the jurisdiction or the responsibilities of adult protective services programs pursuant to Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(e) (1) Nothing in this division shall be construed to supplant the duties or authority of the State Long-Term Care Ombudsman Program pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5.

(2) The protection and advocacy agency shall cooperate with the Office of the State Long-Term Care Ombudsman when appropriate, as provided in Section 9717.

(f) (1) Nothing in this division shall be construed to alter or impact the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9, including the confidentiality requirements of Section 15633 and the legal responsibility of the protection and advocacy agency to report elder or dependent adult abuse or neglect as required by paragraph (1) of subdivision (b) of Section 15630.

(2) The adult protective services agency shall retain the responsibility to investigate any report of abuse or neglect in accordance with Chapter 13 (commencing with Section 15750) of Part 3 of Division 9 when the reported abuse or neglect is within the jurisdiction of the adult protective services agency.

SEC. 6. Section 4902 of the Welfare and Institutions Code is amended to read:

4902. (a) The protection and advocacy agency, in protecting and advocating for the rights of people with disabilities, pursuant to the federal mandate, may do all of the following:

(1) Investigate any incident of abuse or neglect of any person with a disability if the incident is reported to the protection and advocacy agency or if the protection and advocacy agency determines there is probable cause to believe the abuse or neglect occurred. This authority shall include reasonable access to a facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect.

(2) Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities.

(3) Provide information and training on, and referral to, programs and services addressing the needs of people with disabilities, including information and training regarding individual rights and the services available from the protection and advocacy agency.

(b) The protection and advocacy agency shall, in addition, have reasonable access to facilities or programs in the state that provide care and treatment to people with disabilities, and access to those persons.

(1) The protection and advocacy agency shall have reasonable unaccompanied access to public or private facilities, programs, and services, and to recipients of services therein, at all times as are necessary to investigate incidents of abuse and neglect in accord with paragraph (1) of subdivision (a). Access shall be afforded, upon request, to the agency when any of the following has occurred:

(A) An incident is reported or a complaint is made to the agency.

(B) The agency determines there is probable cause to believe that an incident has or may have occurred.

(C) The agency determines that there is or may be imminent danger of serious abuse or neglect of an individual with a disability.

(2) The protection and advocacy agency shall have reasonable unaccompanied access to public and private facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other advocacy services. In the case of information and training services, access shall be at times mutually agreeable to the protection and advocacy agency and facility management. This access shall be for the purpose of any of the following:

(A) Providing information and training on, and referral to programs addressing the needs of, individuals with disabilities, and information and training on individual rights and the protection and advocacy services available from the agency, including, but not limited to, the name, address, and telephone number of the protection and advocacy agency.

(B) Monitoring compliance with respect to the rights and safety of residents or service recipients.

(C) Inspecting, viewing, and photographing all areas of the facility or program that are used by residents or service recipients, or that are accessible to them.

(c) If the protection and advocacy agency's access to facilities, programs, service recipients, residents, or records covered by this division is delayed or denied by a facility, program, or service, the facility, program, or service shall promptly provide the agency with a written statement of reasons. In the case of denial of access for alleged lack of authorization, the facility, program, or service shall promptly provide to the agency the name, address, and telephone number of the legal guardian, conservator, or other legal representative of the individual with a disability for whom authorization is required. Access to a facility, program, service recipient, resident, or to records, shall not be delayed or denied without the prompt provision of a written statement of the reasons for the denial.

(d) The protection and advocacy agency may not enter an individual residence or apartment of a client or his or her family without the consent of an adult occupant. In the absence of this consent, the protection and advocacy agency may enter only if it has obtained the legal authority to enforce its access authority pursuant to legal remedies available under this division or applicable federal law.

(e) A care provider, including, but not limited to, any individual, state entity, or other organization that is required to respond to these requests, may charge a reasonable fee to cover the cost of copying records pursuant to this division that may take into account the costs incurred by the care

provider in locating, identifying, and making the records available as required pursuant to this division. Charges for copying records that would otherwise be available to the protection and advocacy agency or the person with a disability whose records are requested, under other statutes providing for access to records, may not exceed any rates for obtaining copies of the records specified in the applicable provisions.

SEC. 7. Section 4903 of the Welfare and Institutions Code is amended to read:

4903. (a) The protection and advocacy agency shall have access to the records of any of the following people with disabilities:

(1) Any person who is a client of the agency, or any person who has requested assistance from the agency, if that person or the agent designated by that person, or the legal guardian, conservator, or other legal representative of that person, has authorized the protection and advocacy agency to have access to the records and information. If a person with a disability who is able to authorize the protection and advocacy agency to access his or her records expressly denies this access after being informed by the protection and advocacy agency of his or her right to authorize or deny access, the protection and advocacy agency may not have access to that person's records.

(2) Any person, including any individual who cannot be located, to whom all of the following conditions apply:

(A) The individual, due to his or her mental or physical condition, is unable to authorize the protection and advocacy agency to have access to his or her records.

(B) The individual does not have a legal guardian, conservator, or other legal representative, or the individual's representative is a public entity, including the state or one of its political subdivisions.

(C) The protection and advocacy agency has received a complaint that the individual has been subject to abuse or neglect, or has determined that probable cause exists to believe that the individual has been subject to abuse or neglect.

(3) Any person who is deceased, and for whom the protection and advocacy agency has received a complaint that the individual had been subjected to abuse or neglect, or for whom the agency has determined that probable cause exists to believe that the individual had been subjected to abuse or neglect.

(4) Any person who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the protection and advocacy agency, or with respect to whom the protection and advocacy agency has determined that probable cause exists to believe that the person has been subjected to abuse or neglect, whenever all of the following conditions exist:

(A) The representative has been contacted by the protection and advocacy agency upon receipt of the representative's name and address.

(B) The protection and advocacy agency has offered assistance to the representatives to resolve the situation.

(C) The representative has failed or refused to act on behalf of the person.

(b) Individual records that shall be available to the protection and advocacy agency under this section shall include, but not be limited to, all of the following information and records related to the investigation, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, or audiotapes:

(1) Information and records prepared or received in the course of providing intake, assessment, evaluation, education, training, or other supportive services, including, but not limited to, medical records, financial records, monitoring reports, or other reports, prepared or received by a member of the staff of a facility, program, or service that is providing care, treatment, or services.

(2) Reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, injury, or death occurring at the program, facility, or service while the individual with a disability is under the care of a member of the staff of a program, facility, or service, or by or for a program, facility, or service, that describe any or all of the following:

(A) Abuse, neglect, injury, or death.

(B) The steps taken to investigate the incidents.

(C) Reports and records, including, but not limited to, personnel records prepared or maintained by the facility, program, or service in connection with reports of incidents, subject to the following:

(i) If a state statute specifies procedures with respect to personnel records, the protection and advocacy agency shall follow those procedures.

(ii) Personnel records shall be protected from disclosure in compliance with the fundamental right of privacy established pursuant to Section 1 of Article I of the California Constitution. The custodian of personnel records shall have a right and a duty to resist attempts to allow the unauthorized disclosure of personnel records, and may not waive the privacy rights that are guaranteed pursuant to Section 1 of Article I of the California Constitution.

(D) Supporting information that was relied upon in creating a report, including, but not limited to, all information and records that document interviews with persons who were interviewed, physical and documentary evidence that was reviewed, or related investigative findings.

(3) Discharge planning records.

(c) Information in the possession of a program, facility, or service that must be available to the agency investigating instances of abuse or neglect pursuant to paragraph (1) of subdivision (a) of Section 4902, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, audiotapes, or records, shall include, but not be limited to, all of the following:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a program, facility, or service by its staff, contractors, or related entities, subject to any other provision of state law protecting records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building, or other safety standards, or demographic and statistical information, relating to the facility.

(d) The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in Sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.

(e) (1) The protection and advocacy agency shall have access to records of individuals described in paragraph (1) of subdivision (a) of Section 4902 and in subdivision (a), and other records that are relevant to conducting an investigation, under the circumstances described in those subdivisions, not later than three business days after the agency makes a written request for the records involved.

(2) The protection and advocacy agency shall have immediate access to the records, not later than 24 hours after the agency makes a request, without consent from another party, in a situation in which treatment, services, supports, or other assistance is provided to an individual with a disability, if the agency determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, or in a case of death of an individual with a disability.

(f) Confidential information kept or obtained by the protection and advocacy agency shall remain confidential and may not be subject to disclosure. This subdivision shall not, however, prevent the protection and advocacy agency from doing any of the following:

(1) Sharing the information with the individual client who is the subject of the record or report or other document, or with his or her legally authorized representative, subject to any limitation on disclosure to recipients of mental health services as provided in subsection (b) of Section 10806 of Title 42 of the United States Code.

(2) Issuing a public report of the results of an investigation that maintains the confidentiality of individual service recipients.

(3) Reporting the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies that are responsible for facility licensing or accreditation, employee discipline, employee licensing or certification suspension or revocation, or criminal prosecution.

(4) Pursuing alternative remedies, including the initiation of legal action.

(5) Reporting suspected elder or dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9).

(g) The protection and advocacy agency shall inform and train employees as appropriate regarding the confidentiality of client records.

SEC. 8. Section 4905 of the Welfare and Institutions Code is amended to read:

4905. (a) No employee or agent of a facility, program, or service shall subject a person with a disability to reprisal or harassment or directly or indirectly take or threaten to take any action that would prevent the person, his or her legally authorized representative, or family member from reporting or otherwise bringing to the attention of the protection and advocacy agency any facts or information relative to suspected abuse, neglect, or other violations of the person's rights.

(b) Any attempt to involuntarily remove from a facility, program, or service, or to deny privileges or rights without good cause to a person with a disability by whom or for whom a complaint has been made to the protection and advocacy agency, within 60 days after the date the complaint is made or within 60 days after the conclusion of any proceeding resulting from the complaint, shall raise a presumption that the action was taken in retaliation for the filing of the complaint.

SEC. 9. Section 4906 is added to the Welfare and Institutions Code, to read:

4906. (a) The protection and advocacy agency may not obtain access through the use of physical force to facilities, programs, service recipients, residents, or records required by the division if this access is delayed or denied.

(b) Notwithstanding subdivision (a), nothing in this division is intended to preclude the protection and advocacy agency from pursuing appropriate legal remedies to enforce its access authority under this division or applicable federal law.

SEC. 10. Section 5328.06 of the Welfare and Institutions Code is amended to read:

5328.06. (a) Notwithstanding Section 5328, information and records shall be disclosed to the protection and advocacy agency established in this state to fulfill the requirements and assurances of the federal Protection and Advocacy for the Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of people with mental disabilities, including people with mental illness, as defined in Section 10802(4) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

CHAPTER 879

An act to add Section 123232 to the Health and Safety Code, relating to nutrition, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) The obesity and chronic disease rates of children and adults in California have skyrocketed over the past 30 years.

(b) Pregnant women and new mothers are especially at risk for these and other health problems because of time constraints, increased stress levels, and the need for additional nutritional supplements while breastfeeding.

(c) Children ages 0 to 5 years are also suffering from Type-2 diabetes, high cholesterol, high blood pressure levels, and even cardiovascular disease and cancer because of poor eating habits and lack of physical activity.

(d) These issues are exacerbated in households with lower incomes.

SEC. 2. Section 123232 is added to the Health and Safety Code, to read:

123232. (a) The department shall develop or obtain a brochure to educate pregnant women and new parents about the important role in maintaining a healthy lifestyle and preventing chronic diseases of both of the following:

(1) Eating a diet rich in fruits and vegetables.

(2) Staying active every day.

(b) The brochure shall address how proper nutrition and exercise help prevent the development of chronic disease in pregnant women, new mothers, and young children. The brochure shall also include information regarding the critical role of fruits and vegetables in a person's diet, especially as an important source of vitamins and nutrients to new mothers and their breast milk.

(c) The department shall include the brochure on the department's Web site.

(d) The brochure shall be distributed as follows:

(1) By the department to each individual who contacts the BabyCal program and receives a package of information from the program.

(2) By a provider to each participant in the Access for Infants and Mothers (AIM) program one time during the participant's pregnancy.

(e) The brochure shall be available in both English and Spanish.

(f) This section shall be implemented only if, and to the extent that, federal or private funding, or both, are available for that purpose.

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 prevent and control the epidemic of obesity and chronic disease in this state, it is necessary that this act take effect immediately.

CHAPTER 880

An act to amend Sections 45117 and 88017 of the Education Code, relating to education.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 45117 of the Education Code is amended to read:

45117. (a) When, as a result of the expiration of a specially funded program, classified positions must be eliminated at the end of any school year, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before April 29 informing them of their layoff effective at the end of the school year and of their displacement rights, if any, and reemployment rights. However, if the termination date of any

specially funded program is other than June 30, the notice shall be given not less than 45 days prior to the effective date of their layoff.

(b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 45 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.

(c) (1) A classified employee may not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a 45-day layoff notice requirement for any individual hired as a short-term employee, as defined in Section 45103, for a period not exceeding 45 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 45103, who is hired for a period not exceeding 45 days after which the short-term service may not be extended or renewed.

(d) This section does not preclude the governing board of a school district from implementing either of the following actions without providing the notice required by subdivision (a) or (b):

(1) A layoff for a lack of funds in the event of an actual and existing financial inability to pay the salaries of classified employees.

(2) A layoff for a lack of work resulting from causes not foreseeable or preventable by the governing board.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

SEC. 2. Section 88017 of the Education Code is amended to read:

88017. (a) When, as a result of the expiration of a specially funded program, classified positions must be eliminated at the end of any school year, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before April 29 informing them of their layoff effective at the end of the school year and of their displacement rights, if any, and reemployment rights. However, if the termination date of any specially funded program is other than June 30, the notice shall be given not less than 45 days prior to the effective date of their layoff.

(b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 45 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.

(c) (1) A classified employee may not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a 45-day layoff notice requirement for any individual hired as a short-term employee, as defined in Section 88003, for a period not exceeding 45 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 88003, who is hired for a period not exceeding 45 days after which the short-term service may not be extended or renewed.

(d) This section does not preclude the governing board of a community college district from implementing either of the following without providing the notice required by subdivision (a) or (b):

(1) A layoff for a lack of funds in the event of an actual and existing financial inability to pay the salaries of classified employees.

(2) A layoff for a lack of work resulting from causes not foreseeable or preventable by the governing board.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

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 881

An act to add and repeal Sections 45272.5 and 45277.5 of the Education Code, relating to school employees.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 45272.5 is added to the Education Code, to read:

45272.5. (a) Notwithstanding subdivision (a) of Section 45272, in a school district with a pupil population over 400,000, an appointment for a school-based position may be made from any rank on the eligibility

list. However, in making appointments pursuant to this subdivision, at least three eligible candidates from the list, if available, shall be considered and appointing authorities shall consider job-related background and training that are related to successful job performance, placement on the eligibility lists, and seniority, prior to making a job offer.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 45277.5 is added to the Education Code, to read:

45277.5. Notwithstanding Section 45277, in a school district with a pupil population of over 400,000 the following shall apply:

(a) An appointment may be made from other than the first three ranks of eligible applicants on the eligibility list if one or more of the following are required for successful job performance of a position to be filled:

(1) The ability to speak, read, or write a language in addition to English.

(2) A valid driver's license.

(3) Specialized licenses, certifications, knowledge, or ability, as determined by the school district personnel commission, that cannot reasonably be acquired during the probationary period.

(4) A specific gender if it is a bona fide occupational qualification.

(b) The recruitment bulletin announcing the examination shall indicate the special requirements that may be necessary for filling one or more of the positions in the classification. If a position is to be filled using the authority of this section, the appointment shall be made from among the highest three ranks of eligible candidates on the appropriate eligibility list who meet the special requirements of the position and who are ready and willing to accept the position.

(c) If there are insufficient applicants who meet the special requirements, an employee who meets the special requirements may receive provisional appointments which may accumulate to a total of 90 working days. Successive provisional appointments of 90 working days or less each may be made in the absence of an appropriate eligibility list containing applicants who meet the special requirements if the personnel commission finds that the requirements of subdivisions (a) and (b) of Section 45288 have been met. These appointments may continue for the period of the provisional appointment, but may not be additionally extended if certification can later be made from an appropriate eligibility list.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

CHAPTER 882

An act to add Section 87482.8 to the Education Code, relating to community colleges.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. It is the intent of the Legislature to accomplish all of the following:

(a) To put a limitation on the total number of student hours taught by part-time faculty. These part-time faculty members should serve less than 25 percent of the full-time equivalent students (FTES) at any community college.

(b) Decisions regarding the appropriateness of part-time faculty should be made on the basis of academic and program needs and not for financial savings.

(c) To require that part-time faculty be hired well in advance of the beginning of instruction, and that only in the event of genuine emergencies should instructors be hired on shorter notice than one month before the beginning of instruction.

(d) To prohibit part-time faculty from being used to provide teaching or professional services formerly performed by full-time faculty. The conversion of full-time positions into several part-time positions needs to be discontinued.

(e) To allow part-time faculty the opportunity to participate in the full range of professional responsibilities, including student advisement, committee work, and departmental and campuswide faculty meetings, and to pay them for this involvement. If a part-time faculty member prepares a course that is canceled for any reason, that faculty member should be compensated for that preparation.

(f) To require that salaries for part-time faculty be proportionate to the salaries paid to full-time faculty with similar qualifications who do the same work.

SEC. 2. Section 87482.8 is added to the Education Code, to read:

87482.8. Whenever possible:

(a) Part-time faculty should be informed of assignments at least six weeks in advance.

(b) Part-time faculty should be paid for the first week of an assignment when class is cancelled less than two weeks before the beginning of a semester. If a class meets more than once per week, part-time faculty should be paid for all classes that were scheduled for that week.

(c) The names of part-time faculty should be listed in the schedule of classes rather than just described as ''staff.''

(d) Part-time faculty should be considered to be an integral part of their departments and given all the rights normally afforded to full-time faculty in the areas of book selection, participation in department activities, and the use of college resources, including, but not necessarily limited to, telephones, copy machines, supplies, office space, mail boxes, clerical staff, library, and professional development.

CHAPTER 883

An act to add Section 11045 to the Government Code, relating to state contracts.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 11045 is added to the Government Code, to read:

11045. (a) (1) Whenever a state agency requests the consent of the Attorney General to employ outside counsel, as required by Section 11040, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent required by subdivision (c) of Section 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five business days prior to execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall

provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside legal counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).

(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all consents granted to every state agency pursuant to Section 11040.

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

(d) ''Written notice'' within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

(6) The identity of the person or entity that is entering into the contract with the state.

(e) ''State agency,'' as used in this section, means every state office, department, division, bureau, board, or commission, including the Board of Directors of the State Compensation Insurance Fund, but does not include the Regents of the University of California, the Trustees of the California State University, the Legislature, the courts, or any agency in the judicial branch of government.

(f) (1) The notice requirements of this section do not apply to contracts for expert witnesses or consultations in connection with a confidential investigation or to any confidential component of a pending or active legal action.

(2) The exemption authorized in paragraph (1) shall only apply as long as necessary to protect the confidentiality of the investigation or the confidential component of a pending or active legal action.

(3) Disclosures made pursuant to this section are deemed to be privileged communications for purposes of subdivision (c) of Section

912 of the Evidence Code, and shall not be construed to be a waiver of any privilege or exemption provided by law, including, but not limited to, the lawyer-client privilege, as described in Section 952 of the Evidence Code, or attorney work product, as described in Section 2018 of the Code of Civil Procedure.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding or other written agreement reached pursuant to Section 3517 or 3517.5, the memorandum of understanding or agreement shall be controlling without further legislative action, except that if any provision of the memorandum of understanding or other agreement requires the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

CHAPTER 884

An act to amend Sections 515.6, 3099.2, 3099.3, 3099.4, 6309, and 6315 of, and to add Section 3201.81 to, the Labor Code, relating to employment.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 515.6 of the Labor Code is amended to read:

515.6. (a) Section 510 shall not apply to any employee who is a licensed physician or surgeon, who is primarily engaged in duties that require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than fifty-five dollars ($55.00). The Division of Labor Statistics and Research shall adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) shall not apply to an employee employed in a medical internship or resident program or to a physician employee covered by a valid collective bargaining agreement pursuant to Section 514.

SEC. 2. Section 3099.2 of the Labor Code is amended to read:

3099.2. (a) (1) Persons who perform work as electricians shall become certified pursuant to Section 3099 by January 1, 2005. After January 1, 2005, uncertified persons may not perform electrical work for which certification is required.

(2) The California Apprenticeship Council may extend for up to two years the January 1, 2005, deadline for persons who perform work as electricians to become certified. The council shall extend the deadline if the council concludes that the existing deadline will not provide individuals sufficient time to obtain certification, enroll in apprenticeship programs, or register pursuant to Section 3099.4. The council may set different deadlines for different certification categories.

(3) For purposes of any continuing education or recertification requirement, individuals who become certified prior to the deadline for certification shall be treated as having become certified on the first anniversary of their certification date that falls after the certification deadline.

(b) Certification is required only for those persons who perform work as electricians for contractors licensed as Class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations. Certification is not required for persons performing work for contractors licensed as Class C-7 low voltage systems or Class C-45 electric sign contractors as long as the work performed is within the scope of the Class C-7 or Class-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a Class C-10 contractor.

(c) The division may establish different certification categories corresponding to the types of electrical work performed by contractors.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under this chapter, a federal Bureau of Apprenticeship Training program, or a state apprenticeship program authorized by the federal Bureau of Apprenticeship Training. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 3099.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 3099.

(g) Notwithstanding subdivision (a), the qualifying person for a Class C-10 electrical contractor license issued by the Contractors State License Board need not also be certified pursuant to Section 3099 to

perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 3099.4.

(h) For the purposes of this section, ''electricians'' has the same meaning as the definition set forth in Section 3099.

SEC. 3. Section 3099.3 of the Labor Code is amended to read:

3099.3. The Division of Apprenticeship Standards shall do all of the following:

(a) Make information about electrician certification available in non-English languages spoken by a substantial number of construction workers, as defined in Section 7296.2 of the Government Code.

(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants, as defined in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.

(c) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

(e) Report to the Legislature prior to the deadline for individuals to become certified, on the status of electrician certification, including all of the following:

(1) The number of persons who have been certified pursuant to Section 3099.

(2) The number of persons enrolled in electrician apprenticeship programs.

(3) The number of persons who have registered pursuant to Section 3099.4.

(4) The estimated number of individuals performing work for Class C-10 electrical contractors for which certification will be required after the deadline for certification, who have not yet been certified and are not enrolled in apprenticeship programs or registered pursuant to Section 3099.4.

(5) Whether enforcement of the deadline for certification will cause a shortage of electricians in California.

(6) Whether persons who wish to become certified electricians will have an adequate opportunity to pass the certification exam, to register pursuant to Section 399.4, or to enroll in an apprenticeship program prior to the deadline for certification.

SEC. 4. Section 3099.4 of the Labor Code is amended to read:

3099.4. (a) After the deadline for certification, an uncertified person may perform electrical work for which certification is required under Section 3099 in order to acquire the necessary on-the-job experience for certification, if all of the following requirements are met:

(1) The person is registered with the Division of Apprenticeship Standards. A list of current registrants shall be maintained by the division and made available to the public upon request.

(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.

(3) The employer attests that the person shall be under the direct supervision of an electrician certified pursuant to Section 3099 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals pursuant to this section in the future.

(b) For purposes of this section, an ''approved curriculum of classroom instruction'' means a curriculum of classroom instruction approved by the electrician certification curriculum committee established pursuant to paragraph (2) of subdivision (a) of Section 3099 and provided under the jurisdiction of the State Department of Education or the Board of Governors of the California Community Colleges.

(c) For purposes of this section, a person is ''enrolled'' in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of such a curriculum.

(d) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the class work completed and on-the-job experience acquired since the prior registration.

(e) The division shall establish registration fees necessary to implement this section, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Fees collected are continuously appropriated in an amount sufficient to administer this section and that amount may be expended by the division for this purpose.

(f) The division shall issue regulations to implement this section.

(g) For purposes of Section 1773, persons employed pursuant to this section do not constitute a separate craft, classification, or type of worker.

(h) Notwithstanding any other provision of law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (d) of this section.

SEC. 5. Section 3201.81 is added to the Labor Code, to read:

3201.81. In the horse racing industry, the organization certified by the California Horse Racing Board to represent the majority of licensed jockeys pursuant to subdivision (b) of Section 19612.9 of the Business and Professions Code is the labor organization authorized to negotiate the collective bargaining agreement establishing an alternative dispute resolution system for licensed jockeys pursuant to Section 3201.8.

SEC. 6. Section 6309 of the Labor Code is amended to read:

6309. If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative

thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days of taking any action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to an alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

The name of a person who submits to the division a complaint regarding the unsafe condition of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

The division shall annually compile and release on its Web site data pertaining to complaints received and citations issued.

The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.

SEC. 7. Section 6315 of the Labor Code is amended to read:

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for the purpose of prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:

(1) All initial accident reports.

(2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).

(3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case or which the division determines will be helpful to the bureau in its investigation of the case.

(c) The supervisor of the bureau is the administrative chief of the bureau, and shall be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law. If the bureau determines that there is legally insufficient evidence of a violation of the law, the bureau shall notify the appropriate prosecuting authority, if the prosecuting authority requests notice.

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol shall provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) to (h), inclusive.

SEC. 8. Section 5 of this act shall only become operative if Senate Bill 228 is enacted and becomes operative.

CHAPTER 885

An act to amend Sections 4999.2 and 4999.7 of the Business and Professions Code, and to amend Section 1348.8 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. 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 Sections 1760 to 1775, inclusive, 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 a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990), as an optometrist pursuant to Chapter 7 (commencing with Section 3000), or 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), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are 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 are 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) Ensuring that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(6) 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. 2. Section 4999.7 of the Business and Professions Code is amended to read:

4999.7. (a) Nothing in this section shall limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For the purposes of this chapter, ''telephone medical advice'' means a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. ''Telephone medical advice'' includes assessment, evaluation, or advice provided to patients or their family members.

(c) For the purposes of this chapter, ''health care professional'' is a staff person described in Section 4999.2 who provides medical advice services and is appropriately licensed, certified, or registered as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), 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 Sections 1760 to 1775, inclusive, 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 a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990), as an optometrist pursuant to Chapter

7 (commencing with Section 3000), or as a chiropractor pursuant to the Chiropractic Initiative Act, and who is operating consistent with the laws governing his or her respective scopes of practice in the state in which he or she provides telephone medical advice services.

SEC. 3. 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 in compliance 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 or the Osteopathic Initiative Act, 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 Article 7 (commencing with Section 1740) of Chapter 4 of Division 2 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 a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4990) 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, or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating in compliance 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), who are

licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating in compliance 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 staff members handling enrollee or subscriber calls, who are not licensed, certified, or registered as required by paragraph (2), do not provide telephone medical advice. Those staff members may ask questions on behalf of a staff member who is licensed, certified, or registered as required by paragraph (2), in order to help ascertain the condition of an enrollee or subscriber so that the enrollee or subscriber can be referred to licensed staff. However, under no circumstances shall those staff members use the answers to those questions in an attempt to assess, evaluate, advise, or make any decision regarding the condition of an enrollee or subscriber or determine when an enrollee or subscriber needs to be seen by a licensed medical professional.

(5) Ensure that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in Section 4999.2 unless the staff member is a licensed, certified, or registered professional.

(6) 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.

(7) 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.

(8) Ensure 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.

(c) For the purposes of this section, ''telephone medical advice'' means a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. ''Telephone medical advice'' includes assessment, evaluation, or advice provided to patients or their family members.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 886

An act to add Section 138.6 to the Health and Safety Code, and to amend Section 4862 of the Welfare and Institutions Code, relating to health and social services.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Breast cancer now strikes more women in the world than any other type of cancer. In the past 50 years, the lifetime risk of having breast cancer has nearly tripled in the United States. In the 1940s, a woman's lifetime risk of breast cancer was 1 in 22. In the year 2002, the risk is 1 in 8. Breast cancer is the leading cause of death for American women ages 34 to 54 years, and the second leading cause of cancer death for all American women.

(b) This year alone, an estimated 203,500 women in the United States will be diagnosed with invasive breast cancer, and 54,300 with ductal carcinoma in situ, which is a noninvasive tumor contained in a milk duct. An estimated 40,000 will die from the disease. An estimated 3 million women in the United States today are living with breast cancer. Two million have been diagnosed with the disease, and one million have the disease but do not yet know it.

(c) All women are at risk for breast cancer, whether or not the disease is in their family. Heredity accounts for less than 10 percent of all breast cancer cases, but it remains an important risk factor that cannot be dismissed.

(d) Early detection of localized breast cancer continues to figure prominently in the survival rate for the disease.

(e) Mammography does not prevent breast cancer, but the earlier breast cancer is detected by self-examination or mammography and followed by treatment, the greater the woman's chances of survival. Screening mammography, defined as mammography for women who have no symptoms of breast cancer, is different from diagnostic mammography, which is used for patients, both women and men, who are experiencing symptoms of breast cancer, such as a lump or thickening that can be felt in the breast. Diagnostic mammography is a useful technology in helping to establish or rule out a diagnosis of breast cancer.

(f) While regular mammography screening may benefit postmenopausal women, mammography for women in their 30s and 40s remains controversial. Notwithstanding mammography's usefulness as a tool for breast cancer diagnosis, research on the risks and benefits of screening mammography continues to show conflicting results, leading to conflicting opinions and recommendations. Mammographic X-rays fail to detect as many as 20 percent of breast cancers in women over 50 years of age, and as many as 40 percent in younger women. On average, breast tumors have been growing 8 to 10 years before they can be picked up by mammography. Research into mammography alternatives is ongoing, and better ways to detect breast cancer are currently being developed and presented for public and institutional review and use. Some of these methods not only demonstrate potential for greater reliability in detecting breast cancer, but also can be performed without exposing a patient to radiation, which some studies show has increased the risk of breast cancer, as is currently the case with mammography.

SEC. 2. Section 138.6 is added to the Health and Safety Code, to read:

138.6. (a) The department shall include in any literature that it produces regarding breast cancer information that shall include, but not be limited to, all of the following:

(1) Summarized information on risk factors for breast cancer in younger women, including, but not limited to, information on the increased risk associated with a family history of the disease.

(2) Summarized information regarding detection alternatives to mammography that may be available and more effective for at-risk women between the ages of 25 and 40 years.

(3) Information on Web sites of relevant organizations, government agencies, and research institutions where information on mammography alternatives may be obtained.

(b) The information required by subdivision (a) shall be produced consistent with the department's protocols and procedures regarding the production and dissemination of information on breast cancer, including, but not limited to, the following factors:

(1) Restrictions imposed by space limitation on materials currently produced and distributed by the department.

(2) Future regular production and replacement schedules.

(3) Translation standards governing the number of languages and literacy levels.

(4) The nature, content, and purpose of the material into which this new information will be incorporated.

(c) It is the intent of the Legislature that subdivisions (a) and (b) apply to information that is distributed by any branch of the department, including, but not limited to, the Cancer Detection Section and the Office of Women's Health, which are charged with providing information about cancer.

SEC. 3. Section 4862 of the Welfare and Institutions Code, as added by Chapter 226 of the Statutes of 2003, is amended to read:

4862. (a) The length of a work activity program day shall not be less than five hours, excluding the lunch period.

(b) (1) Except as provided in paragraph (2), the length of a work activity program day shall not be reduced from the length of the work activity program day in the historical period that was the basis for the approved habilitation services rate.

(2) (A) A work activity program may, upon consultation with, and prior written approval from, the regional center, change the length of a work activity program day.

(B) If the regional center approves a reduction in the work activity program day pursuant to subparagraph (A), the department may change the work activity program rate.

(c) (1) A work activity program may change the length of a work activity program day for a specific consumer in order to meet the needs of that consumer, if the regional center, upon the recommendation of the individual program planning team, approves the change.

(2) The work activity program shall specify in writing to the regional center the reasons for any proposed change in a work activity program day on an individual basis.

SEC. 4. Section 3 of this act shall become operative on July 1, 2004.

CHAPTER 887

An act to add Chapter 6 (commencing with Section 122320) to Part 6 of Division 105 of the Health and Safety Code, relating to birds.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Chapter 6 (commencing with Section 122320) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

CHAPTER 6. SALE OF BIRDS

122320. As used in this chapter:

(a) ''Bird'' means any order of Psittaciformes bird.

(b) ''Bird mart'' means an event at which two or more persons offer birds for sale or exchange and where a fee is charged for the privilege of offering or displaying the birds.

(c) ''Hand-feeding'' means the process by which a bird is manually fed by a human through the use of hand, spoon, or oral gavage.

(d) ''Pet shop'' means a retail pet shop location primarily engaged in retailing pets, pet foods, and pet supplies, as defined by the North American Industry Classification System.

(e) ''Sale'' has the same meaning as retail sale as defined in Section 6007 of the Revenue and Taxation Code.

(f) ''Time of sale'' means the calendar date the retail purchaser removed the bird from the premises of the pet shop following the retail sale of that bird.

(g) ''Unweaned bird'' means any bird that requires hand-feeding or animal assistance to sustain at least 90 percent of its own weight for at least two weeks.

(h) ''Vendor'' means any person or entity, including, but not limited to, a broker, agent, aviary, or breeder, who sells birds directly to the retail purchaser at a bird mart or at a swap meet as defined in Section 21661 of the Business and Professions Code.

(i) ''Weaned'' means a bird that does not require hand-feeding or animal assistance to sustain at least 90 percent of its own weight following the time of sale, notwithstanding any illness or injury.

122321. (a) A pet shop with five or fewer employees may not possess an unweaned bird unless the pet shop employs at least one person per pet shop location who has completed the Pet Industry Joint Advisory Council's avian certification program.

(b) A pet shop with six or more employees may not possess an unweaned bird unless the pet shop employs at least two people who have completed the Pet Industry Joint Advisory Council's avian certification program.

(c) A pet shop may not sell a bird unless the bird is weaned.

(d) A vendor may not sell a bird at a swap meet or bird mart, unless the bird is weaned.

(e) At the time of sale, a pet shop location or vendor shall document the weight of any hand-fed bird under one year of age, and note the weight on the sales receipt.

122322. (a) Any person violating any provision of this chapter shall be subject to a civil penalty of up to one thousand dollars ($1,000) per violation. The action may be prosecuted in the name of the people of the State of California by the district attorney for the county where the violation occurred in the appropriate court or by the city attorney in the city where the violation occurred.

(b) Nothing in this chapter limits or authorizes any act or omission that violates Section 597 of the Penal Code.

(c) Nothing in this chapter shall authorize the seizure of an unweaned bird by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency.

122323. This chapter does not apply to publicly operated pounds and humane societies.

122324. This chapter shall become operative on September 1, 2004.

CHAPTER 888

An act to amend Sections 488.460 and 700.150 of the Code of Civil Procedure, to amend Sections 26721.2, 26738, and 26746 of, and to add Section 26723 to, the Government Code, and to amend Section 2892 of the Probate Code, relating to law enforcement fees.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 488.460 of the Code of Civil Procedure is amended to read:

488.460. (a) Subject to Section 488.465, to attach property in a safe-deposit box, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the safe-deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the safe-deposit box stands.

(c) During the time the attachment lien is in effect, the financial institution may not permit the removal of any of the contents of the safe-deposit box except as directed by the levying officer.

(d) Upon receipt of a garnishee's memorandum from the financial institution, as required by Section 488.610, indicating a safe-deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the plaintiff does not pay the required fee, plus costs, within three business days plus the extended time period specified in subdivision (a) of Section 1013 for service by mail by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the attachment of the attached property. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the attached property unless the plaintiff pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

(f) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Refusal to permit access to the safe-deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe-deposit box pursuant to the attachment.

SEC. 2. Section 700.150 of the Code of Civil Procedure is amended to read:

700.150. (a) Subject to Section 700.160, to levy upon property in a safe-deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe-deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the safe-deposit box stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution may not permit the removal of any of the contents of the safe-deposit box except as directed by the levying officer.

(d) Upon receipt of a garnishee's memorandum from the financial institution, as required by Section 701.030, indicating a safe-deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the judgment creditor does not pay the required fee, plus costs, within three business days plus the extended time period specified in subdivision (a) of Section 1013 for service by mail by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the levy of the property levied upon. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

(f) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Refusal to permit access to the safe-deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe-deposit box pursuant to the levy.

SEC. 3. Section 26721.2 of the Government Code is amended to read:

26721.2. For any action commenced in the superior court, the fee for the service of the summons, the complaint for which the summons is issued, and all other documents or notices required to be served with the summons and complaint, is thirty dollars ($30).

SEC. 4. Section 26723 is added to the Government Code, to read:

26723. The fee for opening a safe-deposit box pursuant to Sections 488.460 and 700.150 of the Code of Civil Procedure is one hundred twenty-five dollars ($125).

SEC. 5. Section 26738 of the Government Code is amended to read:

26738. The fee for making a not found return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified is thirty dollars ($30).

SEC. 6. Section 26746 of the Government Code is amended to read:

26746. In addition to any other fees required by law, a processing fee of ten dollars ($10) shall be assessed for each disbursement of money

collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. The fee shall be collected from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ. All proceeds of this fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the depositor.

The special fund shall be expended to supplement the county's cost for vehicle fleet replacement and equipment, maintenance, and civil process operations.

A fee may not be charged if the only disbursement is the return of the judgment creditor's deposit for costs.

SEC. 7. Section 2892 of the Probate Code is amended to read:

2892. (a) When a guardian or conservator, pursuant to letters of guardianship or conservatorship of the estate, opens or changes the name to an account or safe-deposit box in a financial institution, as defined in subdivision (b), the financial institution shall send to the court identified in the letters of guardianship or conservatorship a statement containing the following information:

(1) The name of the person with whom the account or safe-deposit box is opened or changed.

(2) The account number or reference number.

(3) The date the account or safe-deposit box was opened or changed ownership pursuant to letters of guardianship or conservatorship.

(4) If the asset is held in an account in a financial institution, the balance as of the date the account was opened or changed.

(5) If the asset is held in a safe-deposit box, and the financial institution has been given access to the safe-deposit box, a list of the contents, including, for example, currency, coins, jewelry, tableware, insurance policies or certificates, stock certificates, bonds, deeds, and wills.

(6) The name and address of the financial institution in which the asset is maintained.

(b) For purposes of this chapter, ''financial institution'' means a bank, trust, savings and loan association, savings bank, industrial bank, or credit union.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 889

An act to add and repeal Article 60.3 (commencing with Section 20919) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Article 60.3 (commencing with Section 20919) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 60.3. Job Order Contracting

20919. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature, in enacting this article, to demonstrate an alternative and optional procedure for bidding of public works projects that is applicable only to the Los Angeles Unified School District.

(b) The Los Angeles Unified School District should be able to utilize cost-effective options for the delivery of public works projects, in accordance with the national trend, which include authorizations in California, to allow public entities to utilize job order contracts as a project delivery method.

(c) The benefits of a job order contract project delivery system include accelerated completion of the projects, cost savings, and reduction of construction contracting complexity for the unified school district.

(d) The job order contracting approach should be used for the purposes of reducing project cost and expediting project completion.

(e) The Legislature is uncertain of the benefits and advantages of job order contracting for California school districts and therefore looks forward to the reports required by Section 20919.12 in order to fully and competently assess any further exemptions to the school contracting process.

(f) The availability of job order contracting as a project delivery method will not preclude the use of traditional methods of project delivery if a traditional method results in higher cost savings.

(g) It is the intent of the Legislature that job order contracts be competitively bid and awarded to the responsible qualified bidder providing the lowest responsive bid. It is further the intent of the Legislature that nothing in the job order contract process or its implementation be used to disenfranchise any bidder or class of bidders that otherwise would meet the requirements of this article.

20919.1. As used in this chapter:

(a) ''Adjustment factor'' means the job order contractor's competitively bid adjustment to the unified school district's prices as published in the catalog of construction tasks.

(b) ''Catalog of construction tasks'' means a book containing specific construction tasks and the unit prices to install or demolish that construction. The listed tasks shall be based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices shall include the cost of materials, labor, and equipment for performing the items of work. The prices shall not include overhead and profit. All unit prices shall be developed using local prevailing wages.

(c) ''Indefinite quantity'' means one or more of the construction tasks listed in the catalog of construction tasks.

(d) ''Job order'' means a firm, fixed priced, lump-sum order issued by the unified school district to a job order contractor for a definite project scope of work as compiled from the catalog of construction tasks to be performed pursuant to a job order contract. No single job order may exceed one million dollars ($1,000,000) in value.

(e) ''Job order contract'' means a competitively bid contract between the unified school district and a licensed, bonded, and general liability insured contractor in which the contractor agrees to a fixed period, fixed unit price, and indefinite quantity contract that provides for the use of job orders for public works or maintenance projects.

(f) ''Job order contract technical specifications'' means a book, published by the unified school district, detailing the technical specifications with regard to quality of materials and workmanship to be used by the job order contractor in accomplishing the tasks listed in the catalog of construction tasks.

(g) ''Job order contractor'' means a licensed, bonded, and general liability insured contractor awarded a job order contract.

(h) ''Offer to perform work'' means the job order contractor's proposal for a specific job order.

(i) ''Plans and specifications'' means the catalog of construction tasks and the job order contract technical specifications. The scope of

work to be performed with a job order contract is potentially, but not necessarily, all the tasks published in the catalog of construction tasks.

(j) ''Project'' means the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(k) ''Project scope of work'' means the document and related drawings, specifications, and writings referenced therein which together set forth the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(*l*) ''Proposal'' means the job order contractor prepared document quoting those construction tasks listed in the catalog of construction tasks that the job order contractor requires to complete the project scope of work, together with the appropriate quantities of each task. The pricing of each task shall be accomplished by multiplying the construction task unit price by the proposed quantity and the contractor's competitively bid adjustment factor. The proposal shall also contain a schedule for the completion of a specific project scope of work as requested by the unified school district. The proposal may also contain approved drawings, work schedule, permits, or other documentation as the unified school district may require for a specific job order.

(m) ''Public works project'' has the same meaning as ''public project,'' as defined in Section 22002.

(n) ''Subcontractor'' means any person, firm, or corporation, other than the employees of the job order contractor, who is bonded and general liability insured and who contracts to furnish labor, or labor and materials, at the worksite or in connection with a job order, whether directly or indirectly on behalf of the job order contractor.

(o) ''Unified school district'' means the Los Angeles Unified School District.

20919.2. Nothing in this article or in this code shall prohibit the unified school district from utilizing job order contracting, as an alternative to any contracting procedures that the unified school district is otherwise authorized or required by law to use.

20919.3. (a) The unified school district shall establish and enforce for job order contracts a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in that provision. This requirement does not apply to any project where the unified school district or the job order contractor has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(b) The unified school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting

pursuant to this article. The unified school district shall select from that plan a sufficient number of projects to be initiated as job order contracts during each calendar year and shall determine for each selected project that job order contracting will reduce the total cost of that project. Job order contracting shall not be used if the unified school district finds that it will increase the total cost of the project.

(c) No later than June 30, 2005, the unified school district shall submit an interim report on all job order contract projects completed by December 31, 2004, to the Office of Public School Construction in the Department of General Services and the Senate and the Assembly Committees on Business and Professions and the Senate and Assembly Committees on Education. The interim report shall be prepared by an independent third party and the unified school district shall pay for the cost of the report. The report shall include the information specified in subdivisions (a) through (h) of Section 20919.12.

20919.4. Bidding for job order contracts shall progress as follows:

(a) (1) The unified school district shall prepare a set of documents for each job order contract. The documents shall include a catalog of construction tasks and preestablished unit prices, job order contract technical specifications, and any other information deemed necessary to describe adequately the unified school district's needs.

(2) Any architect, engineer, or consultant retained by the unified school district to assist in the development of the job order contract documents shall not be eligible to participate in the preparation of a bid with any job order contractor.

(b) Based on the documents prepared under subdivision (a), the unified school district shall prepare a request for bid that invites prequalified job order contractors to submit competitive sealed bids in the manner prescribed by the unified school district.

(1) The prequalified job order contractors shall, as determined by the unified school district, bid one or more adjustment factors to the unit prices listed in the catalog of construction tasks based on the job order contract technical specifications. Awards shall be made to the lowest responsible prequalified bidder.

(2) The unified school district may award multiple job order contracts. Each job order contract shall be awarded to the lowest responsive and responsible prequalified bidder.

(3) The request for bids may encourage the participation of local construction firms and the use of local subcontractors.

(c) (1) The unified school district shall establish a procedure to prequalify job order contractors using a standard questionnaire prepared by the Department of Industrial Relations under Section 20101. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the job order contractor is a partnership, limited partnership, or other association, a listing of all of the partners or association members known at the time of bid submission who will participate in the job order contract.

(B) Evidence that the members of the job order contractor have the capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage the construction of the project, as well as a financial statement that assures the unified school district that the job order contractor has the capacity to complete the project.

(C) The licenses, registration, and credentials required to perform construction, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the job order contractor has the capacity to obtain all required payment and performance bonding and liability insurance.

(E) Information concerning workers' compensation experience history, worker safety programs, and apprenticeship programs.

(i) An acceptable safety record. A contractor's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period do not exceed the applicable statistical standards for its business category or if the contractor is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(ii) Skilled labor force availability as determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in each of the preceding five years. This graduation training for any craft that was first deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft within the five years prior to the effective date of this article.

(F) A full disclosure regarding all of the following that are applicable:

(i) Any serious or willful violation of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the job order contractor.

(ii) Any debarment, disqualification, or removal from a federal, state, or local government public works project.

(iii) Any instance where the job order contractor, or its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(iv) Any instance where the job order contractor, or its owners, officers, or managing employees defaulted on a construction contract.

(v) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the job order contractor.

(vi) Any bankruptcy or receivership of any member of the job order contractor, including, but not limited to, information concerning any work completed by a surety.

(vii) Any settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the job order contractor during the five years preceding submission of a bid under this article, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(G) In the case of a partnership or any association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the job order contract.

(2) The information required under this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

20919.5. (a) The maximum total dollar amount that may be awarded under a single job order contract shall not exceed five million dollars ($5,000,000) in the first term of the job order contract and, if extended or renewed, ten million dollars ($10,000,000) over the maximum two terms of the job order contract adjusted annually to reflect the percentage change in the California Consumer Price Index.

(b) Job order contracts may be executed for an initial contract term of no more than 12 months, with the option of extending or renewing the job order contract for two 12-month periods. The term of the job order contract shall be for the contract term or whenever the maximum value of the contract is achieved, whichever is less. All extensions or renewals shall be priced as provided in the request for bids. The extension or renewal shall be mutually agreed to by the unified school district and the job order contractor.

(c) The unified school district may issue job orders to the job order contractor that has been awarded the job order contract. The job order

shall be based on a project scope of work prepared by the unified school district as well as a proposal from the job order contractor who is awarded the job order contract. No single job order may exceed one million dollars ($1,000,000).

(d) It is unlawful to split or separate into smaller job orders any project for the purpose of evading the cost limitation provisions of this chapter.

(e) All work performed under the job order contract shall be covered by a project stabilization agreement.

20919.6. (a) All work bid under the job order contract shall comply with Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 and is subject to all of the penalties and provisions set forth in that chapter.

(b) For purposes of Article 60.3, if the primary job order contractor chooses to use subcontractors, the primary job order contractor is required to verify that the subcontractors possess the appropriate licenses and credentials required to perform construction.

(c) Notwithstanding subdivision (a), the primary job order contractor may use subcontractors that are not listed at the time of bid of the job order contract if the work to be performed under that job order contract is less than ten thousand dollars ($10,000).

(d) If the primary job order contractor chooses to use a subcontractor that is not listed at the time of bid to perform work on a job order contract that is less than ten thousand dollars ($10,000), both of the following apply:

(1) The unified school district shall provide public notice of the availability of work to be subcontracted by trade. The public notice shall include the scope of work; the project location; the name, address, and the telephone number of the primary job order contractor; and the closing date, time, and location for sealed bids to be submitted.

(2) The primary job order contractor shall take sealed bids from the subcontractors solicited for the proposal. These bids shall be publicly opened at a prescribed time and place by the primary job order contractor. After the bids are opened, they shall be forwarded to the unified school district which shall maintain them as public records.

(e) If the unified school district determines that there has been bid shopping by the primary job order contractor, the unified school district shall terminate the job order contract. If the unified school district determines that a job order contractor has violated Chapter 4 (commencing with Section 4100) of Part 1 of Division 2, the unified school district may declare the contractor ineligible to bid on job order contracts for a period of time to be determined by the unified school district.

20919.7. (a) A job order contract shall set forth in the general conditions of the job order contract the party or parties responsible for seeing that the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code are complied with.

(b) For purposes of job order contracting, prevailing wages when required to be paid shall apply to all work ordered under the job order contract regardless of thresholds set forth in Section 1771.5 of the Labor Code.

(c) The job order contractor shall pay the prevailing wage in effect at the time the job order is issued by the unified school district and all increases as published by the Department of Industrial Relations for the term of the job order contract, including all overtime, holiday, and shift provisions published by the Department of Industrial Relations.

(d) The unified school district shall designate one individual within its labor compliance office to act as a monitor to inspect job sites for labor compliance violations at the request of the designated labor representative.

20919.8. A willful violation of Section 20919.6 occurs when the job order contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions. The unified school district using job order contracting shall publish and distribute to the Labor Commission a list of all job order contractors or subcontractors who violate this provision and the unified school district shall not award a job order contract or any future job orders under an existing job order contract to any contractor or subcontractor who violates this provision during the effective period of debarment of the contractor or subcontractor.

20919.9. For purposes of employment of apprentices on job order contracts, when the individual job order involves more than thirty thousand dollars ($30,000) or 20 working days, all general contractors or subcontractors shall comply with the following:

(a) Prior to commencing work on an individual job order, every contractor shall submit job order award information to an applicable apprenticeship program that can supply apprentices to the site of the job order. The information submitted shall include an estimate of the journeyman hours to be performed under the contract, the number of apprenticeships 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 agency if requested by the awarding agency.

(b) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the job order may be no higher than the ratio stipulated in the apprenticeship standard under which the

apprenticeship program operates where the job order contractor agrees to be bound by those standards but, except as otherwise provided in Section 1777.5 of the Labor Code, in no case shall the ratio be less than one hour of apprenticeship work for every five hours of journeyman work.

(c) Every apprentice employed under the job order contract 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.

(d) Every apprentice employed under the job order contract shall be hired from the local joint labor management apprenticeship committee that has jurisdiction in the geographic area of the project.

20919.10. A job order contractor or subcontractor that knowingly violates the provisions involving employment of apprentices shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration of whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of the provisions involving employment of apprentices within a three-year period where the noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty a sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance and shall not be awarded any further job orders under the job order contract and shall be precluded for a period of one year from bidding on any future job order contracts.

20919.11. In order to prevent fraud, waste, and abuse, the unified school district adopting job order contracting shall do all of the following:

(a) Prepare for each individual job order developed under a job order contract an independent unified school district estimate. The estimate will be prepared prior to the receipt of the contractor's offer to perform work and will be compared to the contractor's proposed price to determine the reasonableness of that price before issuance of any job order. The basis for any adjustments to the unified school district estimate is to be documented. In the event that the contractor's proposal for a given job order is found to be unreasonable, not cost effective, or undesirable, the unified school district is under no obligation to issue the job order to the job order contractor, and may instead utilize any other available procurement procedures.

(b) The unified school district may not issue a job order until the job order has been reviewed and approved by at least two levels of management.

(c) Once a job order has been issued, all documents pertaining to preparation and approval of the job order, including the independent unified school district estimate, shall be available for public review.

20919.12. If the unified school district adopts the job order contracting process, the unified school district shall submit to the Office of Public School Construction in the Department of General Services, the Senate and Assembly Committees on Business and Professions, and the Senate and Assembly Committees on Education, before December 1, 2007, a report containing a description of each job order contract procured, and the work under each contract completed on or before November 1, 2007. The report shall be prepared by an independent third party and the unified school district shall pay for the cost of the report. The report shall include, but not be limited to, all of the following information:

(a) A listing of all projects completed under each job order contract.

(b) The job order contractor that was awarded each contract.

(c) The estimated and actual project costs.

(d) The estimated procurement time savings.

(e) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the job order contract, including, but not limited to, the resolution of the protests.

(f) An assessment of the prequalification process and criteria.

(g) A description of the labor force compliance program required under Section 20919.4, and an assessment of the impact on a project where compliance with that program is required.

(h) Recommendations regarding the most appropriate uses for the job order contract process.

20919.13. If, after 30 days from receipt of the invoice, a contract has not been paid, the contractor shall contact the designated unified school district employee to resolve payment. If the contact with the unified school district's designee does not provide full payment within three business days, the contractor may request a special convening of the payment resolution committee.

(a) The payment resolution committee shall be composed of a representative of the contractor, a representative from labor, a representative designated by the director of facilities within the unified school district, and a representative designated by the director of facilities support services within the unified school district.

(b) After convening, the committee shall make its recommendation of payment within three business days.

20919.14. It is the intent of the Legislature that a moratorium be placed on the enactment of any additional legislation authorizing school districts to use job order contracting until the Legislature has received the reports required by Section 20919.12.

20919.15. This article shall remain in effect only until December 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before December 1, 2007, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution as a result of the unique fiscal and infrastructure difficulties being suffered by the Los Angeles Unified School District.

CHAPTER 890

An act to add and repeal Division 8.6 (commencing with Section 22970) of the Business and Professions Code, to add Section 15618.5 to the Government Code, to amend Section 104557 of the Health and Safety Code, to amend, repeal, and add Section 830.11 of the Penal Code, and to amend Sections 30436, 30449, 30471, 30473.5, 30474, and 30481 of, to add Sections 30019, 30165.1, 30166.1, 30177.5, and 30482 to, to add and repeal Sections 30435 and 30474.1 of, to add and repeal Article 2.5 (commencing with Section 30210) of Chapter 4 of Part 13 of Division 2 of, and to add and repeal Article 5 (commencing with Section 30355) of Chapter 5 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Division 8.6 (commencing with Section 22970) is added to the Business and Professions Code, to read:

DIVISION 8.6. CALIFORNIA CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

22970. This division shall be known as and may be cited as the Cigarette and Tobacco Products Licensing Act of 2003.

22970.1. The Legislature finds and declares all of the following:

(a) The State of California has enacted excise taxes on the distribution of cigarettes and tobacco products to provide funding for local and state

programs, including health services, antismoking campaigns, cancer research, and education programs.

(b) Tax revenues have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products conducted by organized crime syndicates, street gangs, and international terrorist groups.

(c) The enforcement of California's cigarette and tobacco products tax laws is necessary to collect millions of dollars in lost tax revenues each year.

(d) The licensing of manufacturers, importers, wholesalers, distributors, and retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.

22970.2. The board shall administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products.

22970.3. The board may create a Tobacco Tax Compliance Task Force for the purpose of advising the board on cigarette and tobacco products tax compliance issues that may include, but not be limited to, representatives from the following:

(a) The board.

(b) The office of the Attorney General.

(c) The Franchise Tax Board.

(d) The Department of Alcoholic Beverage Control.

(e) The State Department of Health Services.

(f) Federal agencies necessary to coordinate programs to combat tobacco tax evasion, smuggling, and counterfeiting.

(g) One person from each of the categories of persons required by this division to have a license.

(h) Other states engaged in tobacco tax compliance efforts.

(i) Local law enforcement agencies.

22971. For purpose of this division, the following terms shall have the following meanings:

(a) ''Board'' means the State Board of Equalization.

(b) ''Importer'' means an importer as defined in Section 30019 of the Revenue and Taxation Code.

(c) ''Distributor'' means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(d) ''Manufacturer'' means a manufacturer of cigarettes sold in this state.

(e) ''Retailer'' means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.

(f) ''Retail location'' means both of the following:

(1) Any building from which cigarettes or tobacco products are sold at retail.

(2) A vending machine.

(g) ''Wholesaler'' means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(h) ''Cigarette'' means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(i) ''License'' means a license issued by the board pursuant to this division.

(j) ''Licensee'' means any person holding a license issued by the board pursuant to this division.

(k) ''Sale'' or ''sold'' means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(*l*) ''Tobacco products'' means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(m) ''Unstamped package of cigarettes'' means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked ''Not for sale in the United States.''

(n) ''Person'' means a person as defined in Section 30010 of the Revenue and Taxation Code.

(o) ''Package of cigarettes'' means a package as defined in Section 30015 of the Revenue and Taxation Code.

(p) (1) ''Control'' or ''controlling'' means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) ''Law enforcement agency'' means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

22971.1. Commencing January 1, 2006, the Bureau of State Audits shall conduct a performance audit of the licensing and enforcement provisions of this division, and shall report its findings to the board and the Legislature by July 1, 2006. The report shall include, but not be limited to:

(a) The actual costs of the program.

(b) The level of additional revenue generated by the program compared to the period before its implementation.

(c) Tax compliance rates.

(d) The costs of enforcement at the varying levels.

(e) The appropriateness of penalties assessed in this division.

(f) The overall effectiveness of enforcement programs.

22971.2. The board shall administer and enforce the provisions of this division and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this division.

22971.3. Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

CHAPTER 2. LICENSE FOR RETAILERS OF CIGARETTES AND TOBACCO PRODUCTS

22972. (a) Commencing June 30, 2004, a retailer shall have in place and maintain a license to engage in the sale of cigarettes or tobacco products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses.

(b) The retailer shall conspicuously display the license at each retail location in a manner visible to the public.

(c) A license is not assignable or transferable. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

(d) A license shall be valid for a 12-month period, and shall be renewed annually.

22973. (a) An application for a license shall be filed on or before April 15, 2004, on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of such licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application. The board may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that same location.

(c) The board shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one hundred dollars ($100) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars ($100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid.

22973.1. (a) The board shall issue a license to a retailer upon receipt of a completed application and payment of the fees prescribed in Section 22973, unless any of the following apply:

(1) The retailer, or if the retailer is not an individual, any person controlling the retailer, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for violation of any of the provisions of this division, unless:

(A) It has been more than five years since a previous license for the retail location was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For purposes of this section, an ''arm's length transaction'' is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this division that occurred at the retail location, is presumed not to be made at ''arm's length.''

(3) The retailer, or if the retailer is not an individual, any person controlling the retailer, has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(4) The retailer does not possess all required permits or licenses required under the Revenue and Taxation Code.

(b) (1) Any retailer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that retailer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and

place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22973.2. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22974. A retailer shall retain purchase invoices that meet the requirements set forth in Section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. The records shall be kept at the retail location for at least one year after the purchase. Invoices shall be made available upon request during normal business hours for review inspection and copying by the board or by a law enforcement agency. Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22974.3. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize unstamped packages of cigarettes at the retail, or any other person's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee,

within seven days, unless the cigarettes will be destroyed by that law enforcement agency, or unless the cigarettes are otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the inventory of unstamped packages of cigarettes of a retailer or of any other person that is subject to forfeiture and seizure, the possession, storage, ownership, or retail sales of unstamped packages of cigarettes by a retailer or other person, as applicable, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars ($1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving a seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) but not to exceed five thousand dollars ($5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars ($2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) but not to exceed fifty thousand dollars ($50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of tobacco products on which tax is due but has not been paid to the board, the board or law enforcement agency is authorized to seize such tobacco products at the retail, or any other person's location. Any tobacco products seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall

comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a retailer or of any other person until the contrary is established by a proof of payment to the board or by a purchase invoice that shows that the retailer or other person, as applicable, paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the retailer or the other person, as applicable, in possession thereof. Possession of untaxed tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the retailer or other person, as applicable, to the actions described in Section 22981.

22974.4. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any retailer or any person controlling the retailer that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22974.5. Any retailer who fails to display a license as required in Section 22972 shall, in addition to any other applicable penalty, be liable for a penalty of five hundred dollars ($500).

22974.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products.

(2) Five thousand dollars ($5,000).

22974.8. (a) (1) The board shall take action against a retailer, convicted of a violation of either the Stake Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, according to the schedule set forth in subdivision (b).

(2) Convictions of violations by a retailer at one retail location may not be accumulated against other locations of that same retailer.

(3) Convictions of violations accumulated against a prior retail owner at a licensed location may not be accumulated against a new retail owner at the same retail location.

(4) Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the board shall notify the retailer. The notice shall include instructions for appealing the license suspension or revocation.

(b) (1) Upon the first conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, the retailer shall receive a warning letter from the board that delineates the circumstances under which a retailer's license may by suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees shall receive training on tobacco control laws from the Department of Health Services upon a first conviction.

(2) Upon the second conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of five hundred dollars ($500).

(3) Upon the third conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of one thousand dollars ($1,000).

(4) Upon the fourth to the seventh conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the board shall suspend the retailer's license to sell cigarette and tobacco products for 90 days.

(5) Upon the eighth conviction of a violation of the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code within 24 months, the board shall revoke the retailer's license to sell cigarette and tobacco products.

(c) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.

(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the

date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.

CHAPTER 3. LICENSE FOR WHOLESALERS AND DISTRIBUTORS OF CIGARETTES AND TOBACCO PRODUCTS

22975. (a) In addition to licenses required pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, commencing June 30, 2004, every distributor and every wholesaler shall annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products.

(b) Licenses shall be valid for a calendar year period upon payment of the fee prescribed in Section 22977.1, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

(c) A license is not assignable or transferable. A person who obtains a license as a distributor or as a wholesaler who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

22976. A distributor or a wholesaler that, at the time of application, holds a valid license issued by the board pursuant to Section 30140 or 30155 of the Revenue and Taxation Code may be issued a license without further investigation.

22977. (a) An application for a license shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each location where cigarettes or tobacco products will be sold. For applicants who control more than one location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office, shall also be included in the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit numbers for such licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(6) Signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

22977.1. (a) Every distributor and every wholesaler shall file an application, as prescribed in Section 22977, on or before April 15, 2004. Each application shall be accompanied by a fee of one thousand dollars ($1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to meeting the requirements of this section and Section 22977.2, the board shall issue a license.

(b) Every distributor and every wholesaler who commences business after the last day of May 2004, or who commences selling or distributing cigarettes or tobacco products at a new or different place of business in this state after the last day of May 2004, shall file with the board an application as prescribed in Section 22977 at least 30 days prior to commencing such business or commencing such sales or distributions; and all distributors and all wholesalers that fail to timely file an application for a license under subdivision (a) shall file with the board an application as prescribed in Section 22977. Each application shall be accompanied by a fee of one thousand dollars ($1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to Section 22977.2, the board, within 30 days after receipt of an application and payment of the proper fee shall issue a license.

(c) For calendar years beginning on and after January 1, 2005, every distributor and every wholesaler shall file an application for renewal of the license prescribed in Section 22977, accompanied with a fee of one thousand dollars ($1,000) for each location where cigarettes and tobacco products are sold, in the form and manner as prescribed by the board.

22977.2. (a) The board shall issue a license to a distributor or a wholesaler upon receipt of a completed application and payment of the fee prescribed in Section 22977.1, unless any of the following apply:

(1) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a distributor or a wholesaler, whose license is revoked or revocation is pending, unless:

(A) It has been more than five years since a distributor's or a wholesaler's previous license was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the business in an arm's length transaction. For purposes of this section, an ''arm's length transaction'' is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale of the business between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of state tobacco control laws that were committed by the distributor or wholesaler is presumed not to be made at ''arm's length.''

(3) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) (1) Any distributor or any wholesaler who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that distributor or that wholesaler of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the distributor or the wholesaler has so requested in the petition, shall grant the distributor or wholesaler an oral hearing and shall give the distributor or the wholesaler at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the distributor or the wholesaler at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22978. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to distributors and wholesalers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22978.1. All distributors and all wholesalers shall retain purchase records that meet the requirements set forth in Section 22978.5 for all cigarettes or tobacco products purchased. The records shall be maintained for a period of one year from the date of purchase on the distributor's or the wholesaler's premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any distributor or any wholesaler found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22978.2. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a distributor possesses, stores, owns, or has made a sale of an unstamped package of cigarettes bearing a counterfeit California state tax stamp or that a wholesaler possesses, stores, owns, or has made a sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize the unstamped packages of cigarettes

at the distributor's or the wholesaler's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement investigation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the distributor's or wholesaler's inventory of unstamped packages of cigarettes being subject to seizure and forfeiture, the possession, storage, ownership or sale by a distributor or wholesaler of the unstamped package of cigarettes in the manner described above, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars ($1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) but not to exceed five thousand dollars ($5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars ($2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) but not to exceed fifty thousand dollars ($50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a distributor or a wholesaler possesses, stores, owns, or has made a sale of tobacco products on which tax is due but has not been paid to the board, or its designee, the board or law enforcement agency is authorized to seize such tobacco products at the distributor or wholesaler location. Any tobacco products seized by a law enforcement agency shall be delivered to the board within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law

enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a distributor or a wholesaler until the contrary is established by the distributor's proof of payment to the board or by a purchase invoice that shows that the wholesaler paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the distributor or wholesaler in possession thereof. Possession by a distributor or a wholesaler of tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the distributor or wholesaler to the actions described in Section 22981.

22978.4. (a) Each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22978.5. (a) Each distributor and each wholesaler of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a the board or a law enforcement agency.

(b) Failure of a distributor or a wholesaler to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22978.6. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any distributor or any

wholesaler or any person controlling any distributor or any wholesaler that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22978.7. In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products.

(2) Five thousand dollars ($5,000).

CHAPTER 4. LICENSE AND ADMINISTRATION FEE FOR MANUFACTURERS AND IMPORTERS

22979. (a) Commencing on January 1, 2004, every manufacturer and every importer, as defined in subdivision (b) of Section 22971, shall obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(1) Submit to the board a list of all brand families that they manufacture or import.

(2) Update the list of all brand families that they manufacture or import whenever a new or additional brand is manufactured or imported, or a listed brand is no longer manufactured or imported.

(3) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(b) In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer that is a "tobacco product manufacturer" in subdivision (i) of Section 104556 of the Health and Safety Code, shall do all of the following in the manner specified by the board:

(1) Certify to the board that it is a "participating manufacturer" as defined in subsection II(jj) of the "Master Settlement Agreement" (MSA), or is in full compliance with paragraph (2) of subdivision (a) of

Section 104557 of the Health and Safety Code. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(2) Submit to the board a list of all brand families that fit under the category applicable to the manufacturer or importer, in accordance with the following:

(A) Brand families that are to be counted, in the unit volume and market shares determined pursuant to subsections II(z) and II(mm) of the MSA and Exhibit E thereto, in calculating the manufacturer's annual payments under the MSA.

(B) Brand families that are to be counted in calculating the manufacturer's escrow deposits under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code.

(C) The manufacturer or importer shall update the list whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) The board may not grant or permit the maintenance of a license to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with subdivision (b) of Section 30163 of the Revenue and Taxation Code, and that the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13355a et seq.) for the reporting of ingredients added to cigarettes.

(d) (1) Any manufacturer or any importer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that manufacturer or that importer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the manufacturer or the importer has so requested in the petition, shall grant an oral hearing and shall give the manufacturer or the importer at

least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the manufacturer or the importer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22979.1. (a) An application for a license by a manufacturer or by an importer shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. The business name, address, and telephone number of the corporate offices. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) License number for any other valid licenses or permits issued by the board.

(3) Signature of the applicant under oath to verify application information.

(4) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(5) Any other information the board may require.

(b) The board may conduct an inquiry to determine whether the applicant complies with the provisions of this division.

(c) The board shall provide electronic means for applicants to download and submit applications.

22979.2. (a) On or before January 1, 2004, every manufacturer and every importer shall pay to the board an administration fee. The amount of the administration fee shall be one cent ($0.01) per package of cigarettes (1) manufactured or imported by the manufacturer or the importer and (2) shipped into this state during the 2001 calendar year as reported to the board. The board shall notify each manufacturer and each importer of the amount due under this section.

(b) This section shall apply to every manufacturer and every importer required to be licensed pursuant to Section 22979. All manufacturers and all importers that may become eligible for licensure on or after December 1, 2003, shall be notified by the board of the appropriate fee due and shall pay that fee within 90 days of notification.

(c) All manufacturers and all importers that begin operations in the state after enactment of this division shall be charged a fee commensurate with their respective market share of (1) cigarettes manufactured or imported by the manufacturer and (2) sold in this state during the next calendar year as estimated by the board. The fee shall be at an amount not less than that paid pursuant to subdivision (a) by the smallest manufacturer, but may not be more than that paid by the eighth largest manufacturer.

(d) The board shall administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

22979.3. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to manufacturers and importers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22979.4. All manufacturers and importers shall retain purchase records that meet the requirements set forth in Section 22979.5 for all cigarettes or tobacco products purchased and other records required by the board. The records shall be maintained for a period of one year from the date of purchase on the manufacturer's or importer's premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any manufacturer or importer found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22979.5. (a) Each manufacturer and each importer of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was

issued, and shall make these records available upon request by a representative of the board or a law enforcement agency.

(b) Failure of a manufacturer or an importer to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22979.6. (a) Each manufacturer and each importer shall include the following information on each invoice for the sale for distribution, wholesale, or retail sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the manufacturer, or importer.

(2) The license number of the manufacturer or importer as provided by the board.

(3) The name, address, and license number of the person to whom cigarettes or tobacco products are sold.

(4) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22979.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(2) Five thousand dollars ($5,000).

CHAPTER 5. INSPECTIONS, PROHIBITIONS, AND PENALTIES

22980. (a) (1) Any peace officer, or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

(2) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(3) Inspections may be at any place at which cigarettes or tobacco products are sold, produced, or stored or at any site where evidence of activities involving evasion of cigarette or tobacco products tax may be discovered.

(4) Inspections shall be requested or conducted no more than once in a 24-hour period.

(b) Any person that refuses to allow an inspection shall be subject to the penalties imposed pursuant to Section 22981.

22980.1. (a) No manufacturer shall sell cigarettes to a distributor, wholesaler, importer, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) No distributor, wholesaler, or importer shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(c) No retailer, distributor, wholesaler, or importer shall purchase packages of cigarettes from a manufacturer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) No retailer, distributor, wholesaler, or importer shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act

(15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22980.2. (a) A person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) Each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this act offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

22980.3. (a) Licenses issued pursuant to this division shall be subject to suspension or revocation for violations of the provisions of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation, a licensee shall receive a written notice from the board detailing the suspension and revocation provisions of this act. At its discretion, the board may also suspend a license for up to 30 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the board only after judicial conviction or final adjudication of a violation. Upon updating a record for a violation triggering a suspension, the board shall serve the licensee with a notice of suspension and shall order the licenseholder to immediately cease the sale of cigarettes or tobacco products.

(c) Upon notice of suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products. Continued sales after the notification of suspension shall constitute a violation of the licensing provisions of this division and shall result in the revocation of a license.

(d) Upon completion of a suspension period, a license shall be reinstated by the board upon certification that all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for the purchase of cigarette and tobacco products are paid.

(e) After a revocation, a previously licensed applicant may apply for a new license after six months. The board may, at its discretion, issue a new license.

(f) Upon updating a license record for a violation, suspension, or revocation to a license of a person or entity that owns or controls more than one location, the board shall send notice in writing of the violations, suspensions, or revocations within 15 days of the board's action to the address included in the application and listed on the license for receipt of correspondence or notices from the board.

(g) Upon suspension or revocation of a license pursuant to this section, the board shall notify all licensed distributors and wholesalers by electronic mail within 48 hours of the suspension or revocation of that license. All licensed distributors and wholesalers shall provide the board and shall update, as necessary, an electronic mail address that the board can use for purposes of making the notifications required by this subdivision.

(h) Violations by a licensee at one location may not be accumulated against other locations of that same licensee. Violations accumulated against a prior owner at a licensed location may not be accumulated against a new owner at the same licensed location.

(i) For purposes of this section, a violation includes violations of the Revenue and Taxation Code relating to cigarettes and tobacco products, and violations of this division. Only one violation per discrete action shall be counted towards a suspension or revocation of a license.

22981. Any violation of this division by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars ($5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

22982. Any prosecution for a violation of any of the penal provisions of this division shall be instituted within four years after the commission of the offense.

CHAPTER 6. DISPOSITION OF FUNDS

22990. (a) All moneys collected pursuant to this division shall be deposited in the Cigarette and Tobacco Products Compliance Fund, which is hereby created in the State Treasury. No moneys in the Cigarette

and Tobacco Products Compliance Fund shall be used to supplant state or local General Fund money for any purpose.

(b) All moneys in the Cigarette and Tobacco Products Compliance Fund are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

22991. The amount of eleven million dollars ($11,000,000) is appropriated from the Cigarette and Tobacco Products Compliance Fund during the 2003–04 fiscal year to the State Board of Equalization for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003, subject to the following provisions:

(a) Spending under the appropriation made by this subdivision is limited solely to revenues in the fund that are derived from fees imposed on cigarette and tobacco product manufacturers, wholesalers, distributors, importers, and retailers.

(b) Of the total amount appropriated under this subdivision, five million four hundred thousand dollars ($5,400,000) is available for reimbursement to the Department of Justice through an interagency agreement with the board for investigation and enforcement assistance.

(c) The expenditure of any funds from the appropriation made by this subdivision shall require the prior approval of the Director of Finance. The amounts appropriated may be approved for expenditure on an allotment basis and shall be limited to the amounts necessary to carry out the operating and staffing plans for the implementation of the California Cigarette and Tobacco Products Licensing Act of 2003 as approved by the Department of Finance. The Department of Finance shall notify the Joint Legislative Budget Committee of its approval of any expenditure authorization 30 days prior to that approval.

CHAPTER 7. DURATION OF DIVISION

22995. This division shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 2. Section 15618.5 is added to the Government Code, to read:

15618.5. Notwithstanding Section 1808.5 of the Vehicle Code, the board, as a board, individually, or through its staff, may obtain copies of fullface engraved pictures or photographs of licensees directly from the Department of Motor Vehicles for the purposes of enforcing the Revenue and Taxation Code.

SEC. 3. Section 104557 of the Health and Safety Code is amended to read:

104557. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the date of enactment of this article shall do one of the following:

(1) Become a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) For 1999: $0.0094241 per unit sold during that year, after the date of the enactment of this article.

(B) For 2000: $0.0104712 per unit sold during that year.

(C) For each of 2001 and 2002: $0.0136125 per unit sold during the year in question.

(D) For each of 2003 through 2006: $0.0167539 per unit sold during the year in question.

(E) For each of 2007 and each year thereafter: $0.0188482 per unit sold during the year in question.

(b) Any tobacco product manufacturer that places funds into escrow pursuant to paragraph (2) of subdivision (a) shall receive the interest or other appreciation on the funds as earned. The funds, other than the interest or other appreciation, shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under that judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the agreement including after the final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) To the extent not released from escrow under paragraph (1) or (2) of subdivision (b), funds shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) shall annually certify to the Attorney General that it is in compliance with paragraph (2) of subdivision (a), and subdivision (b). The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) Each failure to make an annual deposit required under this section shall constitute a separate violation.

SEC. 4. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of

these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(6) (A) Persons employed by the State Board of Equalization, Investigations Division, who are designated by the board's executive director, provided that the primary duty of these persons shall be the enforcement of laws administered by the State Board of Equalization.

(B) Persons designated pursuant to this paragraph are not entitled to peace officer retirement benefits.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included as ''peace officers of the state'' under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

(d) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 5. Section 830.11 is added to the Penal Code, to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they

receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included as ''peace officers of the state'' under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

(d) This section shall become operative on January 1, 2010.

SEC. 6. Section 30019 is added to the Revenue and Taxation Code, to read:

30019. ''Importer'' means any purchaser for resale in the United States of cigarettes manufactured outside of the United States.

SEC. 7. Section 30165.1 is added to the Revenue and Taxation Code, to read:

30165.1. (a) The following definitions shall apply for purposes of this section:

(1) ''Board'' means the State Board of Equalization.

(2) ''Brand family'' means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, ''menthol,'' ''lights,'' ''kings,'' and ''100s'' and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(3) ''Cigarette'' has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.

(4) ''Distributor'' has the same meaning as in Section 30011.

(5) ''MSA'' means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.

(6) ''Nonparticipating manufacturer'' means any tobacco product manufacturer that is not a participating manufacturer.

(7) ''Participating manufacturer'' has the same meaning as in subsection II(jj) of the MSA.

(8) ''Qualified escrow fund'' has the same meaning as in subdivision (f) of Section 104556 of the Health and Safety Code.

(9) ''Tobacco product manufacturer'' has the same meaning as in subdivision (i) of Section 104556 of the Health and Safety Code.

(10) ''Units sold'' has the same meaning as in subdivision (j) of Section 104556 of the Health and Safety Code.

(b) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the Attorney General a certification to the Attorney General no later than the 30th day of April each year that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer, or is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including all installment payments required by that article and this section, and any regulations promulgated pursuant thereto. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by

imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(1) A participating manufacturer shall include in its certification a complete list of its brand families. The participating manufacturer shall update the list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(2) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, in accordance with the following requirements:

(A) Separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

(B) Separately listing all of its brand families that have been sold in the state at any time during the current calendar year.

(C) Indicating by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(D) Identifying by name and address any other manufacturer, including all fabricators or makers of the brand families in the preceding or current calendar year in a form, manner, and detail as required by the Attorney General. The nonparticipating manufacturer shall update the list 30 days prior to any change in a fabricator for any brand family or any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify all of the following:

(A) That the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice thereof as required by subdivision (f).

(B) That the nonparticipating manufacturer has done all of the following:

(i) Established and continues to maintain a qualified escrow fund as that term is defined in subdivision (f) of Section 104556 of the Health and Safety Code and implementing regulations.

(ii) Executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund.

(iii) If the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement, certification, reports, and any other forms required by Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and implementing regulations are signed by the company that

fabricates or makes the cigarettes and in the manner required by the Attorney General.

(C) That the nonparticipating manufacturer is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto.

(D) That the manufacturer has provided all of the following:

(i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(ii) The account number of the qualified escrow fund and subaccount number for the State of California.

(iii) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any confirming evidence or verification as may be deemed necessary by the Attorney General.

(iv) The amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(4) (A) A tobacco product manufacturer may not include a brand family in its certification unless either of the following is true:

(i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the MSA for the relevant year, in the volume and shares determined pursuant to the MSA.

(ii) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, and any regulations promulgated pursuant thereto and this section.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the MSA or for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division

103 of the Health and Safety Code and any regulations promulgated pursuant thereto.

(5) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a longer period of time.

(c) Not later than June 30, 2004, the Attorney General shall develop and publish on its Internet Web site a directory listing of all tobacco product manufacturers that have provided current, timely, and accurate certifications conforming to the requirements of subdivision (b) and all brand families that are listed in the certifications, except as specified below.

(1) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subdivision (b), unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes that either of the following is true:

(A) In the case of a nonparticipating manufacturer, any escrow deposit required pursuant to Section 104557 of the Health and Safety Code for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully deposited into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

(B) Any outstanding final judgment, including interest thereon, for violations of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto, has not been fully satisfied for the brand family and the manufacturer.

(3) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall promptly provide distributors with written notice of each tobacco product manufacturer and brand family that the Attorney General has added to, or excluded or removed from the list.

(4) Every distributor shall provide to the Attorney General and update, as necessary, an electronic mail address for the purpose of receiving any notifications as may be required by this section.

(5) The Attorney General shall provide each tobacco product manufacturer that has provided all certifications and other information

required by this section with a written acknowledgment of receipt within seven business days after receiving the certifications and other materials. Each tobacco product manufacturer shall provide to each distributor to whom it sells or ships cigarettes, or any tobacco product defined as a cigarette under this section, a copy of each acknowledgment of receipt provided to the manufacturer by the Attorney General. Upon request, the Attorney General shall provide any distributor with a copy of the most recent written acknowledgment of receipt provided to the tobacco product manufacturer.

(d) (1) The Attorney General may exclude or remove from the list required by subdivision (c) a tobacco product manufacturer or any of its brand families, based on a determination that the manufacturer is not a participating manufacturer and has not made all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, in accordance with that subdivision, or has not complied with this section. Before the exclusion or removal may take effect, the Attorney General shall notify the manufacturer of this determination.

(2) Upon receiving notice from the Attorney General pursuant to paragraph (1), the manufacturer may challenge the Attorney General's determination as erroneous, and may seek relief from the determination, by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure for that purpose in the Superior Court for the County of Sacramento, or as otherwise provided by law. The filing of the petition shall operate to stay the Attorney General's determination, if the manufacturer has paid into escrow the full amount of any deficiency in the escrow payments that the Attorney General has determined the tobacco product manufacturer was required to have made under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, including any installment payments required under subdivision (h), pending final resolution of the action.

(e) (1) No person shall affix, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes pursuant to subdivision (a) of Section 30163, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the list posted by the Attorney General pursuant to subdivision (c).

(2) No person shall sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) No person shall do either of the following:

(A) Sell or distribute cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(f) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent, as provided in Section 2105 of the Corporations Code, and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State pursuant to this provision as the agent for service of process does not satisfy the condition precedent specified in paragraph (1) to having its brand families listed or retained in the directory.

(g) (1) Not later than 25 days after the end of each calendar quarter, and more frequently if so directed by the board or the Attorney General, each distributor shall submit any information as the board or Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll your own, the total ounces for which the distributor

affixed stamps during the previous calendar month or otherwise paid the tax due for those cigarettes. The distributor shall maintain, and shall make available to the board and the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the board and the Attorney General for a period of five years.

(2) Notwithstanding Section 30455, the board is authorized to disclose to the Attorney General any information received under this part for purposes of determining compliance with and enforcing the provisions of this section and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto. The board and Attorney General shall share with each other the information received under this section, and may share that information with other federal, state, or local agencies, only for purposes of enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, or corresponding laws of other states.

(3) At any time, the Attorney General may require from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, of the amount of money in the fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates thereof.

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto, the board or the Attorney General may require a retailer, wholesaler, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section, or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto.

(h) To promote compliance with this section, the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of paragraph (2) of subdivision (a) of Section 104557 to make the escrow deposits required in quarterly or other specified installments during the year in which the sales covered by the

deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(i) (1) In addition to any other civil or criminal penalty provided by law, upon a finding that a distributor has violated subdivision (e), or paragraph (1) of subdivision (g), the board may take the following actions:

(A) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor pursuant to the procedures applicable to the revocation of a license set forth in Section 30148.

(B) In the case of a second or any subsequent offense, in addition to the action authorized under subparagraph (A), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(i) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(ii) Five thousand dollars ($5,000).

(2) A distributor in any action for a violation of subdivision (e) shall have a defense provided that either of the following is true:

(A) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list required by subdivision (c).

(B) At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list required by subdivision (c).

(3) The defense described in subparagraph (B) of paragraph (2) is not available to a distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list required by subdivision (c), or the distributor failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail as required by paragraph (4) of subdivision (c).

(4) A violation of paragraph (3) of subdivision (e) shall constitute a misdemeanor.

(j) If a distributor affixes a stamp or meter impression to a package of cigarettes under subdivision (a) of Section 30163, or pays the tax levied under Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list required by subdivision (c) and the date on which the distributor received notice of the exclusion or removal under paragraph (4) of subdivision (c), then both of the following shall apply:

(1) The distributor shall be entitled to a credit for the tax paid by the distributor with respect to the cigarette or tobacco product to which the stamp or meter impression was affixed, or the tax paid during that period. The distributor shall comply with regulations prescribed by the board regarding refunds and credits that are adopted pursuant to Section 30177.5. If the distributor has sold the cigarette or tobacco product to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor shall provide the credit to the wholesaler or retailer.

(2) The brand family may not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco product to which the stamp or meter impression was affixed, or the tax paid, during that period.

(k) Any tobacco product manufacturer that falsely represents any of the following to any person shall be guilty of a misdemeanor for each false representation:

(1) Any information required under subdivision (b).

(2) That the tobacco product manufacturer is a participating manufacturer.

(3) That the tobacco product manufacturer or any other person has made any or all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, if applicable to the manufacturer.

(4) That it has complied with subdivision (b), or with paragraph (1) of subdivision (g), if applicable to the manufacturer.

(*l*) A violation of subdivision (e) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

(m) No person shall be issued a distributor's license, pursuant to Section 30140, unless that person has certified in writing that the person will comply fully with this section. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(n) For the year 2003, if the effective date of the act that added this section is later than March 16, 2003, the first report of distributors required by paragraph (1) of subdivision (g) shall be due 30 days after that effective date, the certifications by a tobacco product manufacturer described in subdivision (b) shall be due 45 days after that effective date, and the directory described in subdivision (c) shall be published or made available within 90 days after that effective date.

(o) The Attorney General may adopt rules and regulations to implement this section. The rules and regulations may establish procedures for including in the list described in subdivision (c) tobacco product manufacturers that are not participating manufacturers and were not required to make escrow payments under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, for sales made during any preceding calendar year, and brand families of those manufacturers. The rules and regulations may also establish procedures for seizure and destruction of cigarettes forfeited to the state pursuant to Section 30436 or Section 30449, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes. Nothing in this section shall affect the authority of local law enforcement and local government officials to seize and destroy contraband under existing state or local law. The regulations adopted to effect the purposes of this section are 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, 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, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(p) In any action brought by the state to enforce this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(q) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

SEC. 8. Section 30166.1 is added to the Revenue and Taxation Code, to read:

30166.1. No later than July 1, 2005, the board shall submit a report to the Legislature that evaluates the average actual costs, including labor for applying indicia or impressions, bonding, warehousing, and leasing stamping equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages. This report shall be updated every two years.

SEC. 9. Section 30177.5 is added to the Revenue and Taxation Code, to read:

30177.5. (a) The board shall credit to a distributor that is entitled to the credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the denominated value, less any discounts authorized by this

part, of the stamps or meter impressions purchased and affixed to those packages of cigarettes that are subject to the provisions of subdivision (j) of Section 30165.1.

(b) The board shall credit to a distributor that is entitled to a credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the amount of taxes paid by that distributor, pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131), with respect to the tobacco products that are subject to the provisions of subdivision (j) of Section 30165.1.

SEC. 10. Article 2.5 (commencing with Section 30210) is added to Chapter 4 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 2.5. Payment by Unlicensed Persons

30210. If any person becomes a cigarette or tobacco products distributor without first securing a license, the tax, and applicable penalties and interest, if any, become immediately due and payable on account of all cigarettes or tobacco products distributed. All cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the unlicensed distributor, are considered to have been distributed.

30211. The board shall forthwith ascertain as best it may the amount of the cigarettes or tobacco products distributed and shall determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, and shall issue a jeopardy determination to the unlicensed person pursuant to Section 30241 and give the unlicensed person notice per Section 30244 of the Cigarette and Tobacco Products Tax Law. However, where the board determines that the failure to secure a license was due to reasonable cause, the penalty may be waived. Sections 30242 and 30243 shall be applicable with respect to the finality of the determination and the right of the unlicensed person to petition for a redetermination.

Any person seeking to be relieved of the penalty shall file with the board a signed statement setting forth the facts upon which he or she bases the claim for relief. Any person who signs a statement pursuant to this section that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

30212. The board shall forthwith collect the tax, penalty, and interest due from the unlicensed person by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

30213. In the suit, a copy of the jeopardy determination certified by the board shall be prima facie evidence that the unlicensed person is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 30223.

30214. The foregoing remedies of the state are cumulative.

30215. No action taken pursuant to this article relieves the unlicensed person in any way from the penal provisions of this part.

30216. This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 11. Article 5 (commencing with Section 30355) is added to Chapter 5 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 5. Seizure and Sale

30355. Whenever any person is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

30356. Notice of the sale and the time and place thereof shall be given in writing at least 20 days before the date set for the sale to the delinquent person and to all persons who have an interest of record in the property seized. The notice shall be personally served or enclosed in an envelope addressed to the person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property. The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the person, and

the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

30357. At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

30358. If upon any sale the moneys received exceed the amount due to the state from the taxpayer, the board shall return the excess to the taxpayer and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold payment of any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the taxpayer, his or her heirs, successors, or assigns.

30359. This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 12. Section 30435 is added to the Revenue and Taxation Code, to read:

30435. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 13. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is hereby forfeited to the state:

(a) Cigarettes or tobacco products transported upon the highways, roads, or streets of this state in violation of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored, or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, that has been loaded, in whole or in part, with packages of cigarettes that do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.

(e) Cigarettes or tobacco products to which are affixed California cigarette tax stamps or meter impressions, or for which tax is paid pursuant to Sections 30123 and 30131.2, in violation of Section 30165.1, regardless of whether the violation is subject to the defense described in paragraph (2) of subdivision (i) of Section 30165.1.

SEC. 14. Section 30449 of the Revenue and Taxation Code is amended to read:

30449. (a) Except as provided in subdivision (b), (c), or (d), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of the sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable, it may destroy that property.

(b) Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.

(c) Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.

(d) Any cigarettes or tobacco products forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.

(e) A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money

forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

SEC. 15. Section 30471 of the Revenue and Taxation Code is amended to read:

30471. Any person who fails or refuses to file any report required to be made, or who fails or refuses to furnish a supplemental report or other data required by the board, or who fails or refuses to allow an inspection by the board, pursuant to Section 30435, or who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars ($1,000) for each offense.

SEC. 16. Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of less than 2,000 is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars ($5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

(b) Any person who possesses, sells, or offers to sell, or buys or offers to buy any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2,000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars ($50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

(c) The board shall destroy any stamps seized under this section.

SEC. 17. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed one thousand dollars ($1,000) or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both the fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the

local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 18. Section 30474.1 is added to the Revenue and Taxation Code, to read:

30474.1. (a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer shall result in the seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

(1) A violation with a total quantity of less than two cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000), or imprisonment not to exceed one year in a county jail, or both the fine and the imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesale license.

(2) A violation with a quantity of two cartons of cigarettes or more shall be a misdemeanor punishable by a fine not to exceed fifty thousand dollars ($50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesaler license.

(b) A court shall consider a defendant's ability to pay when imposing fines pursuant to this section.

(c) For the purposes of this section, counterfeit cigarette and tobacco products include cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof.

(d) The board shall seize and destroy any cigarettes or other tobacco products forfeited to the state under this section.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 19. Section 30481 of the Revenue and Taxation Code is amended to read:

30481. Any prosecution for violation of any of the penal provisions of this part shall be instituted within six years after commission of the offense.

SEC. 20. Section 30482 is added to the Revenue and Taxation Code, to read:

30482. Any person convicted of a crime under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the board under this part shall be transmitted to the Treasurer who shall deposit it into the State Treasury and credit it to the Cigarette Tax Fund.

SEC. 21. Nothing in this act preempts or supersedes any local tobacco control law or ordinance other than those laws or ordinances that are related to the collection of state taxes. Local licensing laws or ordinances may provide for the suspension or revocation of licenses issued by a local government or agency for a violation of the laws imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code).

SEC. 22. All revenues and expenses generated by this act with respect to the taxes imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code), shall be allocated in the same manner as those revenues and expenses are allocated under the Cigarette and Tobacco Products Tax Law as that law read on the effective date of this act.

SEC. 23. 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. 24. If the amendments to paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code made by Section 3 of this act are held by a court of competent jurisdiction to be unconstitutional, Section 3 of this act shall be deemed repealed, and paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code shall be deemed to be in the form as it existed prior to the amendments made to that section by Section 3 of this act. Neither a holding of unconstitutionality of the provisions of Section 3 of this act, nor an implied repeal of the amendments to paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code made by Section 3 of this act shall affect, impair, or invalidate any other portion of Section 104557 of the Health and Safety Code, or the application of that section to any other person or circumstance, and those remaining portions of Section 104557 of the Health and Safety Code shall at all times continue in full force and effect.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates

a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 891

An act to add Section 17462.7 to, and to add and repeal Section 17462.5 of, the Education Code, relating to public schools.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 17462.5 is added to the Education Code, to read:

17462.5. (a) Notwithstanding any other provision of law to the contrary, including, but not limited to, Section 17462, a school district may deposit an amount not to exceed 25 percent of the proceeds of the sale of surplus school real property, excluding any interest earned thereon, into the school district general fund and may use those proceeds for any one-time expenditure of the school district, except for salaries and benefits, if all of the following criteria are met:

(1) The school district has an enrollment of fewer than 11,000 pupils.

(2) The school district has experienced declining enrollment for each school year from 1999–2000 to 2002–03, inclusive.

(3) The proceeds are from the sale of school district real property that occurred between July 1, 1997, and June 30, 2000, inclusive.

(b) Deposit of proceeds in the school district general fund pursuant to this section does not disqualify the school district from eligibility for state funding under the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10)) or under Section 17584.

(c) For the purposes of this section ''sale'' includes, but is not limited to, a lease of surplus property with an option to purchase.

(d) For purposes of this section, the State Allocation Board shall review and may disapprove the determination of the governing board of a school district that property is surplus property if any of the proceeds from the sale of that property are used for purposes other than capital outlay or maintenance costs.

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

SEC. 2. Section 17462.7 is added to the Education Code, to read:

17462.7. The board shall reduce an apportionment of hardship assistance awarded to a school district pursuant to Article 8 (commencing with Section 17075.10) by an amount equal to the amount of any proceeds from the sale of surplus property used for a one-time expenditure of the school district pursuant to Section 17462.5 for five years following the expenditure.

CHAPTER 892

An act to amend Sections 44579.1, 44579.2, 44579.5, 47604, 47607, 47612.5, 47613, 47634, 60242, and 60421 of, to amend and repeal Sections 14002.3 and 47612 of and, to add Sections 47604.32, and 47604.33 to, the Education Code, relating to charter schools, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) The intent of the Legislature, in enacting the Charter Schools Act of 1992, was to hold charter schools accountable for meeting measurable pupil outcomes and to provide charter schools with a method to change from rule-based to performance-based accountability systems.

(b) Objective, statewide, and uniform minimum academic standards should be adopted to ensure that the performance-based accountability system for charter schools is linked to meeting measurable pupil outcomes.

(c) The Charter Schools Act of 1992 shall be interpreted to further its purpose as a performance-based accountability system.

SEC. 2. Section 14002.3 of the Education Code, as added by Section 26 of Chapter 1168 of the Statutes of 2002, is amended 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.

SEC. 3. Section 14002.3 of the Education Code, as added by Section 3 of Chapter 1168 of the Statutes of 2002, is repealed.

SEC. 4. Section 44579.1 of the Education Code is amended to read:

44579.1. (a) There is hereby established the Instructional Time and Staff Development Reform Program. It is the intent of the Legislature that this program enhance staff development opportunities for classroom personnel, but this article does not provide the sole source of funding for staff development activities for school personnel or limit the amount or type of staff development that is provided to school district personnel from other resources.

(b) The department shall submit draft regulations for the purpose of implementing this article to the State Board of Education for its review and approval. The State Board of Education shall adopt regulations for the purpose of implementing this article pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Each fiscal year, the Superintendent of Public Instruction shall provide each eligible school district and county office of education applying for a grant pursuant to this article with a staff development allowance of two hundred seventy dollars ($270) per day, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to three days, for each certificated classroom teacher and one hundred forty dollars ($140) per day, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to one day for each classified classroom instructional aide and certificated teaching assistant who participates in staff development instructional methods, including teaching strategies, classroom management and other training designed to improve pupil performance, conflict resolution, intolerance and hatred prevention, and academic content in the core curriculum areas that are provided by the school district or county office of education.

(d) To be eligible for a grant pursuant to this article, the staff development program provided by the school district or county office of education shall meet all of the following requirements:

(1) Meet local educational priorities as defined by the governing board of the school district or county board of education.

(2) Be consistent with regulations defining staff development activities eligible to receive funding pursuant to this section.

(e) To qualify as a funded participant, each eligible participant shall be present for the full staff development day, and records of attendance

shall be maintained in a manner to be prescribed in regulations. Each staff development day shall be at least as long as the full-time instructional workday for certificated or classified instructional employees of the school district. For purposes of this section, a single staff development day may be conducted over several calendar days.

(f) (l) Except as provided pursuant to paragraph (2), if the staff development day is conducted after completion of an instructional day, it may not be held on a minimum day for which a parent or guardian was notified pursuant to subdivision (c) of Section 48980.

(2) For staff working in multitrack, year-round schools, not more than two staff development days may be scheduled for ''off track'' teachers at a school with a minimum day scheduled. In this event, teachers at the multitrack, year-round school who are being paid for service on the minimum days are not eligible for that day of funding under this article.

(g) Notwithstanding Section 45203, probationary and permanent employees in the classified service may not receive regular pay on days during which staff development is offered pursuant to this article unless they are required to report for duty on those days.

(h) This section shall be operative in any fiscal year only to the extent that funds are provided for its purposes in the annual Budget Act.

SEC. 5. Section 44579.2 of the Education Code is amended to read:

44579.2. (a) The Superintendent of Public Instruction shall disburse grant funds for this program in the following manner:

(1) Beginning in the 1999–2000 fiscal year, an advance disbursement shall be made following passage of the annual Budget Act. This disbursement shall be provided to each school district and county office of education that participated in the Instructional Time and Staff Development Reform Program in the prior fiscal year, and shall be limited to 25 percent of the amount apportioned to each entity in the prior year.

(2) Each year a disbursement of grant funding to all applicants shall be made following receipt of applications submitted pursuant to Section 44579.1, adjusted as necessary by the amount disbursed pursuant to paragraph (1). If a school district or county office of education that participated in this program in the prior fiscal year fails to submit an application, all funds disbursed to that school district or county office of education pursuant to paragraph (l) shall be deducted from its next monthly principal apportionment payment.

(3) A final adjustment to the amounts paid pursuant to paragraph (2) shall be made following receipt by the Superintendent of Public Instruction of certification by the superintendent of the school district or the county superintendent of schools, as appropriate, of the total number of teacher-days attendance at staff development training that complies

with all of the applicable provisions of this article and the regulations adopted by the State Board of Education.

(4) If the amount disbursed pursuant to this article to a school district, county office of education during any fiscal year differs from the amount to which the school district, or county office of education was entitled pursuant to this article, the Superintendent of Public Instruction shall, at the next monthly apportionment following discovery of the error, withhold from, or add to, the apportionment payment made during that month, the amount of the excess or deficiency, as the case may be.

(b) Notwithstanding any other provision of law, excesses withheld or deficiencies added by the Superintendent of Public Instruction pursuant to this section shall be added to, or allowed from, any portion of the State School Fund.

SEC. 6. Section 44579.5 of the Education Code is amended to read:

44579.5. Notwithstanding any other provision of law, a school district or county office of education that participates in the Mathematics and Reading Professional Development Program pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 may claim funding, as described in subdivision (c) of Section 44579.1, for the 80 hours of followup instruction, coaching, or additional schoolsite assistance required pursuant to subdivision (b) of Section 99237 if the training meets the requirements described in subdivision (d) of Section 44579.1 and is conducted outside of an instructional day that the school district or county office of education is required to provide in order to qualify for funding pursuant to Part 26 (commencing with Section 46000). Funding claimed pursuant to this section shall be in addition to funding received pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

SEC. 7. Section 47604 of the Education Code is amended to read:

47604. (a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code).

(b) The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to this section shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.

(c) An authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by

law, including, but not limited to, those required by Section 47604.32 and subdivision (m) of Section 47605.

SEC. 8. Section 47604.32 is added to the Education Code, to read:

47604.32. Each chartering authority, in addition to any other duties imposed by this part, shall do all of the following with respect to each charter school under its authority:

(a) Identify at least one staff member as a contact person for the charter school.

(b) Visit each charter school at least annually.

(c) Ensure that each charter school under its authority complies with all reports required of charter schools by law.

(d) Monitor the fiscal condition of each charter school under its authority.

(e) Provide timely notification to the department if any of the following circumstances occur or will occur with regard to a charter school for which it is the chartering authority:

(1) A renewal of the charter is granted or denied.

(2) The charter is revoked.

(3) The charter school will cease operation for any reason.

(f) The cost of performing the duties required by this section shall be funded with supervisorial oversight fees collected pursuant to Section 47613.

SEC. 9. Section 47604.33 is added to the Education Code, to read:

47604.33. (a) Each charter school shall annually prepare and submit the following reports to its chartering authority and the county superintendent of schools, or only to the county superintendent of schools if the county board of education is the chartering authority:

(1) On or before July 1, a preliminary budget. For a charter school in its first year of operation, the information submitted pursuant to subdivision (g) of Section 47605 satisfies this requirement.

(2) On or before December 15, an interim financial report. This report shall reflect changes through October 31.

(3) On or before March 15, a second interim financial report. This report shall reflect changes through January 31.

(4) On or before September 15, a final unaudited report for the full prior year.

(b) The chartering authority shall use any financial information it obtains from the charter school, including, but not limited to, the reports required by this section, to assess the fiscal condition of the charter school pursuant to subdivision (d) of Section 47604.32.

(c) The cost of performing the duties required by this section shall be funded with supervisorial oversight fees collected pursuant to Section 47613.

SEC. 10. Section 47607 of the Education Code is amended to read:

47607. (a) (1) A charter may be granted pursuant to Sections 47605, 47605.5, and 47606 for a period not to exceed five years. A charter granted by a school district governing board, a county board of education or the State Board of Education, may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period of five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter. The authority that granted the charter may inspect or observe any part of the charter school at any time.

(2) Renewals and material revisions of charters shall be governed by the standards and criteria in Section 47605.

(b) Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever is later, a charter school shall meet at least one of the following criteria prior to receiving a charter renewal pursuant to paragraph (1) of subdivision (a):

(1) Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

(2) Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

(3) Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.

(4) (A) The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

(B) The determination made pursuant to this paragraph shall be based upon all of the following:

(i) Documented and clear and convincing data.

(ii) Pupil achievement data from assessments, including, but not limited to, the Standardized Testing and Reporting Program established by Article 4 (commencing with Section 60640) for demographically similar pupil populations in the comparison schools.

(iii) Information submitted by the charter school.

(C) A chartering authority shall submit to the Superintendent of Public Instruction copies of supporting documentation and a written summary of the basis for any determination made pursuant to this paragraph. The Superintendent of Public Instruction shall review the materials and make recommendations to the chartering authoring based

on that review. The review may be the basis for a recommendation made pursuant to Section 47604.5.

(D) A charter renewal may not be granted to a charter school prior to 30 days after that charter school submits materials pursuant to this paragraph.

(5) Has qualified for an alternative accountability system pursuant to subdivision (h) of Section 52052.

(c) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

(2) Failed to meet or pursue any of the pupil outcomes identified in the charter.

(3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

(4) Violated any provision of law.

(d) Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

SEC. 11. Section 47612 of the Education Code, as amended by Section 1 of Chapter 36 of the Statutes of 2002, is amended to read:

47612. (a) A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Section 8 of Article IX of the California Constitution, with regard to the appropriation of public moneys to be apportioned to any charter school, including, but not limited to, appropriations made for the purposes of this chapter.

(b) The average daily attendance in a charter school may not, in any event, be generated by a pupil who is not a California resident. To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress towards award of a high school diploma. The State Board of Education shall, on or before January 1, 2000, adopt regulations defining ''satisfactory progress.''

(c) A charter school shall be deemed to be a ''school district'' for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24, Section 47638, and Sections 8 and 8.5 of Article XVI of the California Constitution.

SEC. 12. Section 47612 of the Education Code, as added by Section 2 of Chapter 36 of the Statutes of 2002, is repealed.

SEC. 13. Section 47612.5 of the Education Code is amended to read:

47612.5. (a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following:

(1) Offer, at a minimum, the same number of minutes of instruction set forth in paragraph (3) of subdivision (a) of Section 46201 for the appropriate grade levels.

(2) Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (*l*) of Section 47605.

(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent of Public Instruction shall withhold from the charter school's apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of

nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

(e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, ‘‘classroom-based instruction’’ in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and

are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (*l*) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

(2) For the purposes of this part, ''nonclassroom instruction'' or ''nonclassroom-based instruction'' means instruction that does not meet the requirements specified in paragraph (1). The State Board of Education may adopt regulations pursuant to paragraph (1) of subdivision (d) specifying other conditions or limitations on what constitutes nonclassroom-based instruction, as it deems appropriate and consistent with this part.

(3) For purposes of this part, a schoolsite is a facility that is used principally for classroom instruction.

SEC. 14. Section 47613 of the Education Code is amended to read:

47613. (a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

(c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisorial oversight, and administrative costs necessary to secure charter school funding. A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b).

(d) This section does not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.

(e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.

(f) For the purposes of this section, ''revenue of the charter school'' means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.

SEC. 15. Section 47634 of the Education Code is amended to read:

47634. The Superintendent of Public Instruction shall annually compute a categorical block grant amount for each charter school as follows:

(a) The superintendent shall compute, as of June 30, 1999, the estimated statewide average amount of funding for other state categorical aid per unit of average daily attendance received by school districts in 1998–99, for each of four grade level ranges: kindergarten and grades 1, 2, and 3; grades 4, 5, and 6; grades 7 and 8; and grades 9 to 12, inclusive. For purposes of this computation, other state categorical aid is limited to the following programs:

(1) The Agricultural Vocational Education Incentive Program, as set forth in Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28.

(2) Apprentice education established pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6.

(3) The Beginning Teacher Support and Assessment System as set forth in Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25.

(4) College preparation programs as set forth in Chapter 8 (commencing with Section 60830) of Part 33, the Academic Improvement and Achievement Act as set forth in Chapter 12 (commencing with Section 11020) of Part 7, and the advanced placement program as set forth in Chapter 8.3 (commencing with Section 52240) of Part 28.

(5) Community day schools as set forth in Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(6) The Instructional Time and Staff Development Reform Program, as set forth in Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25.

(7) The School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act, as set forth in Article 7 (commencing with Section 54720) of Chapter 9 of Part 29.

(8) The Early Intervention for School Success Program, as set forth in Article 4.5 (commencing with Section 54685) of Chapter 9 of Part 29.

(9) Education Technology pursuant to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28.

(10) Foster youth programs pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24.

(11) Gifted and talented pupil programs pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(12) The Healthy Start Support Services for Children Act, as set forth in Chapter 5 (commencing with Section 8800) of Part 6.

(13) High-Risk First-Time Offenders program pursuant to Chapter 2 (commencing with Section 47760) of Part 26.95.

(14) The General Fund contribution to the State Instructional Material Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(15) Intersegmental programs for kindergarten and grades 1 to 12, inclusive, funded by Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998.

(16) Proposition 98 educational programs pursuant to Item 6110-231-0001 of Section 2.00 of the Budget Act of 1998.

(17) The California Mentor Teacher Program, as set forth in Section 44253.6.

(18) The Miller-Unruh Basic Reading Act of 1965, as set forth in Chapter 2 (commencing with Section 54100) of Part 29.

(19) The Morgan-Hart Class Size Reduction Act of 1989, as set forth in Chapter 6.8 (commencing with Section 52080) of Part 28.

(20) Opportunity schools pursuant to Article 2 (commencing with Section 48630) of Chapter 4 of Part 27.

(21) Partnership academies pursuant to Article 5 (commencing with Section 54690) of Chapter 9 of Part 29.

(22) Mathematics staff development pursuant to Chapter 3.25 (commencing with Section 44695) and Chapter 3.33 (commencing with Section 44720) of Part 25.

(23) Improvement of elementary and secondary education pursuant to Chapter 6 (commencing with Section 52000) of Part 28.

(24) The School Community Policing Partnership Act of 1998, as set forth in Article 6 (commencing with Section 32296) of Chapter 2.5 of Part 19.

(25) The School/Law Enforcement partnership funded by Item 6110-226-0001 of Section 2.00 of the Budget Act of 1998.

(26) Specialized secondary schools pursuant to Chapter 6 (commencing with Section 58800) of Part 31.

(27) School personnel staff development and resource centers pursuant to Chapter 3.1 (commencing with Section 44670) of Part 25.

(28) Supplemental grant funding, not otherwise included in the programs described above, provided by Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998.

(29) Academic progress and counseling review pursuant to Section 48431.6.

(30) The Schiff-Bustamante Standards-Based Instructional Materials Program as set forth in Chapter 3.5 (commencing with Section 60450) of Part 33.

(31) The Elementary School Intensive Reading Program, as set forth in Chapter 16 (commencing with Section 53025) of Part 28.

(32) The California Public School Library Protection Act, as set forth in Article 6 (commencing with Section 18175) of Chapter 2 of Part 11.

(33) The California Peer Assistance and Review Program for Teachers, as set forth in Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25.

(34) The State Instructional Materials Fund, as set forth in Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(35) The Instructional Materials Funding Realignment Program, as set forth in Chapter 3.25 (commencing with Section 60420) of Part 33.

(36) Mathematics and Reading Professional Development Program, as set forth in Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

Notwithstanding any other provision of law, charter schools that have received a block grant pursuant to this section are not eligible to receive separate funding for programs enumerated in this subdivision or any other state categorical aid programs established on or after July 1, 1999, that are included in the calculation made pursuant to this subdivision and for which charter schools are not required to apply separately.

(b) For purposes of the computation prescribed by subdivision (a), other state categorical aid may not include any of the following:

(1) Programs for which a charter school is required to apply separately.

(2) Programs that support, or are provided in lieu of, capital expenses.

(3) Funding for court-ordered or voluntary desegregation programs.

(4) Special education programs.

(5) Economic Impact Aid.

(6) Lottery funds.

(c) The superintendent shall annually adjust each of the amounts computed pursuant to subdivision (a) to reflect programs that existed on or after July 1, 1999, or their successors, that are subsequently included in or deleted from the categorical block grant. The Director of Finance shall annually recalculate the cumulative percentage change required pursuant to subdivision (c) of Section 47634.5 by adjusting the base year and the budget year figures to reflect those program shifts.

(d) The superintendent shall annually adjust each of the resulting four amounts computed pursuant to subdivision (a) by the cumulative percentage change from the 1998–99 fiscal year, as annually calculated by the Director of Finance pursuant to Section 47634.5, in the total amount of state funding per unit of average daily attendance received by K–12 local educational agencies for purposes that apply toward meeting the requirements of Section 8 of Article XVI of the California Constitution, exclusive of funding for adult education, child development programs, special education, Economic Impact Aid, revenue limits for school districts and county offices of education, and programs for which a charter school is required to apply separately. Programs for which charter schools are required to apply separately are

programs that expressly authorize or require a charter school to apply for funding.

(e) The superintendent shall multiply each of the four amounts computed in subdivision (d) by the charter school's average daily attendance in the corresponding grade level ranges.

(f) The superintendent shall compute the statewide average amount of funding per identified educationally disadvantaged pupil received by school districts in the current year pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29. This amount shall be multiplied by the number of educationally disadvantaged pupils enrolled in the charter school. The resulting amount may, if greater than zero, not be less than the minimum amount of Economic Impact Aid funding to which a school district of similar size would be entitled pursuant to Section 54031. For purposes of this subdivision, a pupil who is eligible for subsidized meals pursuant to Section 49552 and is identified as an English language learner pursuant to subdivision (a) of Section 306 shall count as two pupils.

(g) The superintendent shall add the amounts computed in subdivisions (e) and (f). The resulting amount shall be the charter school's categorical block grant that the superintendent shall apportion to each charter school from funds appropriated for this purpose in the annual Budget Act or another statute.

(h) Notwithstanding any other provision of law, a charter school is not eligible to apply for funding under any of the programs the funding of which is included in the computation of the categorical block grant. The Superintendent of Public Instruction shall annually provide each charter school with a list of these programs and shall ensure that a charter school receives timely notification of the opportunity to apply for programs administered by the State Department of Education that are excluded from the categorical block grant.

(i) It is the intent of the Legislature to fully fund the categorical block grant and to appropriate additional funding that may be needed in order to compensate for unanticipated increases in average daily attendance in charter schools. In any fiscal year in which the department identifies a deficiency in the Charter School Categorical Block Grant, the department shall identify programs that are funded toward meeting the requirements of Section 8 of Article XVI of the California Constitution that will have unobligated funds for the year and the associated balances available. At the second principal apportionment, the department shall provide the Department of Finance with a list of those programs and their available balances, and the amount of the deficiency in the Charter School Categorical Block Grant. The Director of Finance shall verify the amount of the deficiency in the Charter School Categorical Block Grant and direct the Controller to transfer from those programs to the Charter

School Categorical Block Grant an amount equal to the lesser of the amount available or the amount needed to fully fund the Charter School Categorical Block Grant. The Department of Finance shall request the transfer on or before July 1 and notify the Joint Legislative Budget Committee within 45 days of the transfer.

(j) Categorical block grant funding may be used for any purpose determined by the governing body of the charter school.

SEC. 16. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding pursuant to this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan.

(3) To the extent that a school district or county office of education already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 16.5. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive. A school district may purchase with funds received pursuant to Chapter 3.25 (commencing with Section 60420) instructional materials for the visual and performing arts, foreign language, health, or any other curricular area if those materials are adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive, and if the school district certifies that it has provided each pupil with a standards-aligned textbook or basic instructional materials in reading/language arts, mathematics, history/social science, and science.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding pursuant to this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan.

(3) To the extent that a school district or county office of education already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 17. Section 60421 of the Education Code is amended to read:

60421. (a) The department shall apportion funds appropriated for purposes of this chapter to school districts on the basis of an equal amount per pupil enrolled in kindergarten and grades 1 to 12, inclusive, in the prior year, excluding summer school, adult, and regional occupational center and regional occupational programs enrollment. Enrollment shall be certified by the Superintendent of Public Instruction and based on data as reported by the California Basic Education Data System count. A school district in its first year of operation or of expanding grade levels at a schoolsite shall be eligible to receive funding pursuant to this chapter based on enrollment estimates provided to the department by the school district. As a condition of receipt of funding, a school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall provide enrollment estimates, as approved by the school district governing board and the county office of education in which the school district is located. These estimates and associated funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.

(b) For the purposes of this chapter, the term ''school district'' means a school district or county office of education, and the term ''local governing board'' means the governing board of a school district or county board of education.

(c) Allowances established pursuant to this chapter shall be apportioned to school districts in September of each fiscal year.

(d) Notwithstanding any other provision of law, pursuant to subdivision (g) of Section 60200, the State Board of Education may authorize a school district to use any state basic instructional materials allowance to purchase standards-aligned materials as specified within this part.

SEC. 18. Section 16.5 of this bill incorporates amendments to Section 60242 of the Education Code proposed by both this bill and SB 469. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends

Section 60242 of the Education Code, and (3) this bill is enacted after in which case Section 16 of this bill shall not become operative.

SEC. 19. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 893

An act to amend Section 56505.2 of the Education Code, relating to special education.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 56505.2 of the Education Code is amended to read:

56505.2. (a) A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic, nonsectarian agency, if the school or agency has not been certified pursuant to Section 56366.1.

(b) A hearing officer shall consider Sections 56365, 56365.5, 56366, and 56366.1 during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or services for an individual with exceptional needs provided by a nonpublic, nonsectarian agency.

(c) A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs being provided by a nonpublic, nonsectarian agency, unless the hearing officer issues a written finding that the district's program or program offer has not complied with legal requirements.

(d) A hearing officer may not render a decision that results in the reimbursement for the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in reimbursement for a service for an individual with exceptional needs

being provided by a nonpublic, nonsectarian agency, unless the hearing officer issues a written finding that the district's program or program offer did not comply with legal requirements during the time period relevant to the reimbursement request.

(e) Nothing in subdivision (c) or (d) shall be construed to alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

CHAPTER 894

An act to amend Sections 353.2 and 379.5 of, and to add Section 379.6 to, the Public Utilities Code, relating to energy.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Increasing California's reliance on renewable energy resources, particularly solar, ''ultra-clean,'' and ''low-emission'' electricity generation, promotes stable electricity prices, protects public health, improves environmental quality, stimulates sustainable economic development, creates new employment opportunities, and reduces reliance on imported fuels.

(b) The development of renewable energy resources, particularly nonpolluting solar electricity generation, ameliorates air quality problems throughout the state and improves public health by reducing the burning of fossil fuels and the associated environmental impacts.

(c) The Self Generation Incentive Program administered by the Public Utilities Commission and established pursuant to Section 379.5 (Decision 01-03- 073, March 27, 2001), has been a critically important subsidy for the growth of solar electricity generation in California, but is set to expire at the end of 2004.

(d) The Legislature intends that the commission continue the Self Generation Incentive Program in order to subsidize solar electricity generation.

SEC. 2. Section 353.2 of the Public Utilities Code is amended to read:

353.2. (a) As used in this article, ''ultra clean and low emission distributed generation'' means any electric generation technology that meets both of the following criteria:

(1) Commences initial operation between January 1, 2003, and December 31, 2008.

(2) Produces zero emissions during its operation or produces emissions during its operation that are equal to or less than the 2007 State Air Resources Board emission limits for distributed generation, except that technologies operating by combustion must operate in a combined heat and power application with a 60-percent system efficiency on a higher heating value.

(b) In establishing rates and fees, the commission may consider energy efficiency and emissions performance to encourage early compliance with air quality standards established by the State Air Resources Board for ultra clean and low emission distributed generation.

SEC. 3. Section 379.5 of the Public Utilities Code is amended to read:

379.5. Notwithstanding any other provision of law, on or before March 7, 2001, the commission, in consultation with the Independent System Operator, shall take all of the following actions, and shall include the reasonable costs involved in taking those actions in the distribution revenue requirements of utilities regulated by the commission, as appropriate:

(a) (1) Identify and undertake those actions necessary to reduce or remove constraints on the state's existing electrical transmission and distribution system, including, but not limited to, reconductoring of transmission lines, the addition of capacitors to increase voltage, the reinforcement of existing transmission capacity, and the installation of new transformer banks. The commission shall, in consultation with the Independent System Operator, give first priority to those geographical regions where congestion reduces or impedes electrical transmission and supply.

(2) Consistent with the existing statutory authority of the commission, afford electrical corporations a reasonable opportunity to fully recover costs it determines are reasonable and prudent to plan, finance, construct, operate, and maintain any facilities under its jurisdiction required by this section.

(b) In consultation with the State Energy Resources Conservation and Development Commission, adopt energy conservation demand-side management and other initiatives in order to reduce demand for electricity and reduce load during peak demand periods. Those initiatives shall include, but not be limited to, all of the following:

(1) Expansion and acceleration of residential and commercial weatherization programs.

(2) Expansion and acceleration of programs to inspect and improve the operating efficiency of heating, ventilation, and air-conditioning equipment in new and existing buildings, to ensure that these systems achieve the maximum feasible cost-effective energy efficiency.

(3) Expansion and acceleration of programs to improve energy efficiency in new buildings, in order to achieve the maximum feasible reductions in uneconomic energy and peak electricity consumption.

(4) Incentives to equip commercial buildings with the capacity to automatically shut down or dim nonessential lighting and incrementally raise thermostats during a peak electricity demand period.

(5) Evaluation of installing local infrastructure to link temperature setback thermostats to real-time price signals.

(6) Incentives for load control and distributed generation to be paid for enhancing reliability.

(7) Differential incentives for renewable or super clean distributed generation resources pursuant to Section 379.6.

(8) Reevaluation of all efficiency cost-effectiveness tests in light of increases in wholesale electricity costs and of natural gas costs to explicitly include the system value of reduced load on reducing market clearing prices and volatility.

(c) In consultation with the Energy Resources Conservation and Development Commission, adopt and implement a residential, commercial, and industrial peak reduction program that encourages electric customers to reduce electricity consumption during peak power periods.

SEC. 4. Section 379.6 is added to the Public Utilities Code, to read:

379.6. (a) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall until January 1, 2008, administer a self-generation incentive program for distributed generation resources, in the same form as exists on January 1, 2004.

(b) Notwithstanding subdivision (a), the self-generation incentive program shall do all of the following:

(1) Commencing January 1, 2005, require all combustion-operated distributed generation projects using fossil fuels to meet an oxides of nitrogen (NO_x) emissions rate standard of 0.14 pounds per megawatthour to be eligible for self-generation rebates.

(2) Commencing January 1, 2007, require all combustion-operated distributed generation projects using fossil fuels to meet an oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent, to be eligible for self-generation rebates. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(3) Combined heat and power units that meet the 60 percent efficiency standard may take a credit to meet the applicable oxides of nitrogren (NOx) emission standard of 0.14 pounds per megawatthour or 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British Thermal Units (BTUs) of heat recovered.

(4) Provide the commission with flexibility in administering the self-generation incentive program, including, but not limited to, flexibility with regard to the amount of rebates, inclusion of other ultra clean and low emission distributed generation technologies, and evaluation of other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests.

CHAPTER 895

An act to add Sections 14148.03, 14148.04, and 14148.05 to the Welfare and Institutions Code, relating to health care.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Recent studies show that the highest infant mortality rates in California are in the Central Valley, that African-American infants have disproportionately higher mortality rates than the rest of the population, and that eligible Hispanic women enroll in the Medi-Cal program and begin prenatal care late in pregnancy posing risks to both the mother and the newborn.

(b) Simplifying the enrollment procedures into the Medi-Cal program for pregnant women and children is necessary to promote access to timely health services that can save lives and prevent disabilities.

(c) Providing prenatal care and health services in the first years of life can prevent more costly long-term chronic illnesses and disabilities.

(d) It is in the state's best interests to realize the savings that will result from enrolling more of the currently eligible pregnant women and newborns into health programs as early as possible and to maximize receipt of federal matching funds to support these programs.

SEC. 2. Section 14148.03 is added to the Welfare and Institutions Code, to read:

14148.03. (a) Pursuant to options provided in federal law and notwithstanding any other provision of law, the form used by a provider to collect information about a pregnant woman pursuant to the Medi-Cal temporary benefits program under Section 14148.7 as that program is implemented on January 1, 2003, shall itself qualify as a simplified application for the Medi-Cal program for pregnant women, or, if necessary to ensure federal financial participation, the form shall be modified to add only those elements required for federal financial participation and be as simple as the department considers practicable.

(b) For purposes of this section, the department shall determine whether to grant eligibility for temporary benefits under Section 14148.7 and the county shall make the final eligibility determination for the Medi-Cal program. The department shall develop and adopt a process for transferring the application to the county and a followup process that is as simple as the department considers practicable to be used by the county if followup is necessary. Based on the department's instructions, the county shall make a determination whether followup is necessary to determine the woman's final eligibility for the Medi-Cal program or to refer the woman to the Access for Infants and Mothers (AIM) program.

(c) The department shall adopt an electronic enrollment process for pregnant women to use when applying for the Medi-Cal program from a provider's office. The application form for this electronic enrollment shall use the elements of the application form described in subdivision (a) and the procedures specified in subdivision (b). This electronic enrollment process shall be known as the Prenatal Gateway. In developing the Prenatal Gateway required by this subdivision, the department shall consult with consumer, provider, county, and health plan representatives.

(d) The purpose of this section is to begin eligibility and benefits at the time of an eligible pregnant woman's visit to a provider and to continue eligibility and benefits until a final eligibility determination is made without the submission of any other application form to the department, the county, or a single point of entry and to make the followup process as simple as the department considers practicable.

(e) The Prenatal Gateway may not be adopted until both of the following occur:

(1) Sufficient moneys have been deposited in the Special Funds Account of the Gateway Fund to defray the costs of developing the Prenatal Gateway.

(2) Sufficient new staff, not to exceed a total of three personnel years, is available at the department for the purposes of this section and Section 14148.04 and is funded through nonstate General Fund sources.

Notwithstanding any other provision of law, the department may hire staff necessary to implement this section.

(f) 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, and 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. 3. Section 14148.04 is added to the Welfare and Institutions Code, to read:

14148.04. (a) The department shall adopt, as specified in this section, an electronic process for families to enroll a deemed eligible newborn in the Medi-Cal program from hospitals that have elected to participate in the process. The electronic enrollment process adopted pursuant to this section shall be known as the Newborn Hospital Gateway.

(b) With respect to the enrollment of a child under the age of one year who is deemed to have applied and is deemed eligible for Medi-Cal benefits under Section 1396a(e)(4) of Title 42 of the United States Code, the enrollment procedures of the Newborn Hospital Gateway shall specifically include procedures for confirming the eligibility of, and issuing a Medi-Cal card to, that child.

(c) In developing the Newborn Hospital Gateway required by this section, the department shall consult with consumer, provider, county, and health plan representatives.

(d) The Newborn Hospital Gateway may not be adopted until both of the following occur:

(1) Sufficient moneys have been deposited in the Special Funds Account of the Gateway Fund to defray the costs of developing the Newborn Hospital Gateway.

(2) Sufficient new staff, not to exceed a total of three personnel years, is available at the department for the purposes of this section and Section 14148.03 and is funded through nonstate General Fund sources. Notwithstanding any other provision of law, the department may hire staff necessary to implement this section.

(e) 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 and 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. 4. Section 14148.05 is added to the Welfare and Institutions Code, to read:

14148.05. (a) There is hereby created in the State Treasury the Gateway Fund.

(b) Moneys in the fund may be expended, upon appropriation by the Legislature, exclusively for purposes of establishing and maintaining the Prenatal Gateway, as provided for in Section 14148.03, and the Newborn Hospital Gateway, as provided for in Section 14148.04, and in accordance with subdivision (c).

(c) The fund shall consist of the following accounts:

(1) The Special Funds Account, which shall consist of all funds received by the Controller for purposes of Sections 14148.03 and 14148.04 from private foundations and other nongovernmental sources and interest accrued thereon. Moneys in this account shall be used exclusively for the purposes of Sections 14148.03 and 14148.04. The department shall not be responsible for securing funding from private foundations or other nongovernmental sources.

(2) The Other Public Funds Account, which shall consist of all public funds, other than federal or state general funds, received by the Controller for purposes of Sections 14148.03 and 14148.04 from state or local sources, including, but not limited to, funds received under the California Families and Children Act of 1998, Division 108 (commencing with Section 130100) of the Health and Safety Code (Proposition 10), and the interest accrued thereon.

(3) The Federal Funds Account, which shall consist of all public funds received by the Controller for purposes of Sections 14148.03 and 14148.04 from federal sources, and the interest accrued thereon.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains

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

CHAPTER 896

An act to amend Section 44259.1 of the Education Code, relating to teacher training.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 44259.1 of the Education Code is amended to read:

44259.1. (a) (1) An integrated program of professional preparation shall enable candidates for teaching credentials to engage in professional preparation, concurrently with subject matter preparation, while completing baccalaureate degrees at regionally accredited postsecondary institutions. An integrated program shall provide opportunities for candidates to complete intensive field experiences in public elementary and secondary schools early in the undergraduate sequence. The development and implementation of an integrated program shall be based on intensive collaboration among subject matter departments and education units within postsecondary institutions and local public elementary and secondary school districts.

(2) The commission shall encourage postsecondary institutions to offer integrated programs of professional preparation that follow the guidelines developed pursuant to this section. In approving integrated programs, the commission shall not compromise or reduce its standards of subject matter preparation pursuant to Article 6 (commencing with Section 44310) or its standards of professional preparation pursuant to paragraph (3) of subdivision (b) of Section 44259.

(b) (1) Commencing with the 2005–06 school year, an integrated program offered by the California State University shall be designed to concurrently lead to a preliminary multiple subject or single subject teaching credential, and a baccalaureate degree. Recommendation for each shall be contingent upon satisfactory completion of the requirements for each.

(2) By July 1, 2004, the Chancellor of the California State University, in consultation with California State University faculty members, shall develop a framework defining appropriate balance for an integrated program of general education, subject matter preparation, and professional education courses, for both lower division and upper division students, including an appropriate range of units to be taken in professional education courses. In developing the framework, the Chancellor of the California State University and California State University faculty members shall consult with the Academic Senate for the California Community Colleges on matters related to the effective and efficient use of, and appropriate role for, lower division coursework in an integrated program.

(c) (1) By January 1, 2005, the Chancellor of the California State University and the Chancellor of the California Community Colleges shall collaboratively ensure that both of the following occur:

(A) Lower division coursework completed by a community college student transferring to a California State University integrated program is articulated with the corresponding coursework of the California State University.

(B) The articulated community college lower division coursework is accepted as the equivalent to the coursework offered to students who enter that integrated program as freshman students.

(2) Commencing with the 2005–06 school year, each campus of the California State University shall invite the community colleges in its region that send significant numbers of transfer students to that campus to enter into articulation agreements. These articulation agreements shall be based on a fully transferable education curriculum that is developed pursuant to the framework developed under paragraph (2) of subdivision (b). Approval of one or more of the articulation agreements will enable the coursework of a community college student to be accepted as the equivalent to the coursework offered to students who enter that integrated program as freshman students.

(d) A postbaccalaureate program of professional preparation shall enable candidates for teaching credentials to commence and complete professional preparation after they have completed baccalaureate degrees at regionally accredited institutions. The development and implementation of a postbaccalaureate program of professional preparation shall be based on intensive collaboration among the postsecondary institution and local public elementary and secondary school districts.

SEC. 2. The Chancellor of the California State University shall review the implementation, pursuant to Section 44259.1 of the Education Code, of integrated programs of professional preparation for teaching careers. The chancellor shall report his or her findings and

recommendations in this regard to the Legislature no later than November 30, 2006.

CHAPTER 897

An act to add Article 11.5 (commencing with Section 31770) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to public employees.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Article 11.5 (commencing with Section 31770) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 11.5. Deferred Retirement Option Program

31770. This article shall be known and may be cited as the ''Deferred Retirement Option Program.''

31770.1. (a) The Deferred Retirement Option Program is hereby created to provide eligible members who elect to participate in the program access to a lump sum, or in some cases, additional monthly payments for a specified period in addition to a monthly retirement allowance.

(b) The design and administration of the Deferred Retirement Option Program shall conform to the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

(c) If any provision of this article or application thereof to any person or circumstance is held invalid, that invalidity will not affect other provisions or applications of this article that can be given effect without the invalid provisions or application, and to this end the provisions of this article are severable.

31770.2. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article:

(a) ''DROP'' or ''program'' means the Deferred Retirement Option Program established by this article, as adopted by a county or district.

(b) ''Election date'' means the date the member elects to participate in the program.

(c) ''Deferred retirement calculation date'' means the date prior to the member's actual retirement date, as of which benefits under the program shall be calculated as provided in Section 31778.1.

(d) ''Implementing ordinance'' means the ordinance or resolution adopted by the county board of supervisors or governing board of the district, pursuant to Section 31770.3, providing for the implementation

of the program in the county or district and specifying the applicable program options as provided in this article.

(e) ''Participant'' means any eligible safety member of the system described in Section 31469.4, 31470.2, or 31470.4 who has validly elected to participate in the program.

(f) ''Program account'' means the account established by the system for each participant of the program pursuant to Section 31772.

(g) ''Program period'' means the period of time commencing on the election date and ending on the member's retirement date, which period may not exceed 60 months of elapsed time.

(h) ''Retirement date'' means the date the member terminates employment and retires from the system.

31770.3. (a) This article, or selected provisions of this article, shall become effective in any county or district only when the county board of supervisors or governing board of the district adopts an ordinance or resolution providing for that implementation. The board of supervisors or governing board may not adopt that ordinance or resolution, and this article, or selected portions of this article, may not become effective in the county or district unless and until the actuarial analysis described in Section 31770.4 has been completed and has determined that the program, as proposed to be adopted by the county or district, will be cost neutral and agreed to in a collective bargaining agreement.

(b) Based on the actuarial analysis, the requirement of cost neutrality, and the collective bargaining agreement, the county or district shall, in the implementing ordinance, elect one of the following for each bargaining unit other than a bargaining unit whose members are described in Section 31470.4:

(1) To be subject to the provisions of this article, including the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, but excluding the actuarial equivalent DROP provisions contained in Section 31777 and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(2) To be subject to the provisions of this article, including the actuarial equivalent DROP provisions contained in Section 31777, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(3) To be subject to the provisions of this article, including the backward DROP options contained in Sections 31778 to 31778.2, inclusive, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the actuarial equivalent DROP provisions contained in Section 31777.

(c) With respect to a bargaining unit whose members are described in Section 31470.4, the county or district may, in the implementing

ordinance, be subject only to the provisions of this article as provided in paragraph (3) of subdivision (b).

(d) The program shall become operative with respect to all safety members of the system on the date specified in the implementing ordinance.

(e) The implementing ordinance shall specify a period of time, which shall be at least four years and not more than 10 years from the date of implementation, after which an initial review of the program shall be conducted pursuant to Section 31779.

31770.4. (a) The board shall, upon the request of, and before adoption of, the implementing ordinance by the county board of supervisors or governing board of the district, cause an actuarial analysis to be conducted to determine whether the program, as proposed to be adopted, will be cost neutral. A proposed program shall be deemed to be cost neutral if, based on the applicable actuarial assumptions, it will not have a significant negative financial impact on the members, employer, or the retirement system, as specified in subdivision (b).

(b) The actuarial analysis shall take into account the impact of the proposed program on specific measures, including, but not limited to, employer contributions, the system's actuarial accrued liability, and the present value of benefits. A proposed program will not be deemed to be cost neutral if there is any anticipated increase in any of these measures attributable to the implementation of the program or if there is a decrease in the present value of benefits of more than 3 percent attributable to the implementation of the program.

(c) The actuarial analysis shall identify all cost elements expected to change due to the implementation of the program and shall include the impact of those changes. These may include, but are not limited to, cost elements such as benefit payments, expected retirement age, and the likelihood of termination or disability by those near retirement age. The analysis may not take into account items unrelated to the proposed programs, including the investment return on fund assets or the life expectancy of currently retired members.

(d) As used in this section:

(1) ''Actuarial accrued liability'' means the portion of the present value of benefits attributable to service before the valuation date.

(2) ''Present value of benefits'' means the value, as of the valuation date, of all benefits expected to be paid to current members of the system.

31770.5. (a) The implementing ordinance shall establish the eligibility requirements for participation in the program, subject to this section and the collective bargaining agreement. The ordinance shall specify the minimum age and the minimum and maximum, if any, years of service credit required to be eligible to participate in the program,

which minimum and maximum, if any, may not be less than the minimum age and service credit requirements for service retirement.

(b) Members shall be eligible to elect to participate in the program at any time after the attainment of the minimum age and years of credited service in the system specified in the implementing ordinance. Members who satisfy the eligibility requirements on the implementation date of the program, as set forth in the implementing ordinance, shall be eligible to elect to participate in the program as of the operative date of the program.

(c) Prior service purchased pursuant to this chapter and service performed by the member under another public retirement system shall be included for purposes of determining eligibility for the program to the extent provided in Section 31836.

(d) Members who have left county or district service and who have elected deferred retirement pursuant to Article 9 (commencing with Section 31700) will not be eligible to participate in the forward DROP provisions unless they return to county service during the operative period of the program.

31770.6. (a) Upon adoption of the implementing ordinance, the retirement system shall establish procedures for notifying members of their rights under the program.

(b) Each member, before electing to participate in the program, shall be given written information regarding how benefits under the program would be calculated and a comparison of the member's anticipated benefits at retirement with and without participation in the program. All members will be advised to seek advice from professional tax and investment advisors before electing to participate in the program.

31770.7. The right of a participant to benefits under the program is not subject to execution or any other process, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this chapter.

31770.8. The rights of a participant or his or her spouse under the program shall be subject to any applicable provisions of law or court orders relating to dissolution of marriage, division of community property, and child or spousal support.

31771. The provisions of this section to Section 31776.5, inclusive, shall be referred to collectively as the ''forward DROP provisions.''

31771.1. (a) Any member who elects to participate in the forward DROP provisions of the program shall make the election on a form prescribed and retained by the board. On that form the member shall do all of the following:

(1) Designate a program period that will not exceed 60 months of elapsed time, agree to terminate covered employment under the system no later than the end of that designated period, and acknowledge that

participation in the program is not a guarantee of continued employment for any period.

(2) Waive any claims with respect to age and other discrimination in employment laws relative to the program as are required by the employer or the system.

(3) Waive the right to disability retirement benefits based on a condition relating to an illness or injury that occurred prior to the program period. This waiver does not apply to any rights the member may have under Section 31720.5, 31720.6, or 31720.7, which rights shall remain in effect until the member receives a distribution of some or all of the balance in his or her program account.

(b) If the member is married, the member's spouse shall execute a statement, on a form prescribed by the board, acknowledging the spouse's understanding of, and agreement with, the member's election to participate in the program, together with an express statement of the spouse's understanding and agreement that benefits payable to the spouse upon the death of the member will be reduced as a result of that participation.

31771.2. (a) On and after the election date, the participant shall cease to accrue retirement benefits under this chapter, and instead shall begin to accrue benefits under the program pursuant to the terms of this article, which benefits shall be credited to the participant's program account pursuant to Section 31772.

(b) A member's election to participate in the program shall be irrevocable except in the following circumstances:

(1) If the member is married on the election date and if that spouse dies during the program period, the member may, within 90 days after the spouse's death, elect to revoke his or her election to participate in the program. In that case, the member's benefits shall be calculated on retirement as if the member had never entered the program.

(2) If the member elects to retire for disability under the circumstances described in Section 31774, the member's participation in the program shall cease and the member may apply for conversion of the deferred retirement allowance to a disability allowance calculated at date of entry into the program, and the employee shall retain all proceeds in the program account.

(c) (1) A participant in the program shall have all of the rights, privileges, and benefits, and is subject to all terms and conditions of active employment including, but not limited to, eligibility for other benefit programs not related to retirement benefits, seniority, accrual and use of vacation and sick leave, and pay increases.

(2) A participant shall continue to make normal member contributions under this chapter during the program period.

(d) Except as otherwise provided in Section 31773, eligibility of a spouse for any benefits, including survivor's benefits shall be based on the participant's marital status and the duration of the marriage as of the retirement date.

31771.3. The implementing ordinance shall specify, based on the results of the actuarial analysis and the requirement that the program be cost neutral, as described in Section 31770.4, whether the employer shall be required to continue to make contributions to the system with respect to the compensation of participants in the program and whether that compensation shall be included in the determination of employer contribution rates.

31772. (a) A program account shall be established within the system for each participant. No system assets shall be separately segregated for any program account. A participant may not have a claim on any specific assets of the system.

(b) A participant's program account shall be credited with an amount equal to the service retirement allowance the member would have received if the member had retired for service on the election date and had selected an unmodified allowance, subject to the following:

(1) Sick leave and vacation time accrued by the member as of the election date may not be included in the calculation of service credit or final compensation for the retirement time where the member enters the program, except as otherwise provided in a collective bargaining agreement.

(2) The provisions of Article 15 (commencing with Section 31830) may not apply in the calculation of the participant's final compensation.

(c) Subject to the results of the actuarial analysis and the requirement that the program be cost neutral, the implementing ordinance may provide that some or all of the following amounts shall also be credited monthly to the participant's program account:

(1) Some or all of the normal member contributions under this chapter made by, or on behalf of, the participant during the program period.

(2) Some or all of the employer contributions to the system made on account of the participant during the program period.

(3) Some or all of the annual cost-of-living adjustments the member would have received if the member had retired for service on the election date and selected an unmodified allowance.

(4) Interest. If the implementing ordinance provides for the crediting of interest, it shall be credited semiannually at a rate that is equal to: (A) the interest rate, if any, applicable to employee contributions to the system, or (B) a fixed rate specified in the implementing ordinance, or (C) a rate determined semiannually by the retirement board.

31772.1. The board shall provide a statement to the participant that displays the value or balance of the participant's program account and summarizes any credits to the account or other transactions that occurred after the immediately preceding valuation date. The statement of account shall be provided at least once annually to each participant, and may be provided more often.

31773. (a) If a participant dies during the program period, he or she shall be deemed to have died while eligible for retirement and his or her benefits shall be calculated as if in active service, except as provided in subdivisions (b) and (c).

(b) Benefits under Article 12 (commencing with Section 31780) or, if applicable, Section 31765, 31765.1, or 31765.11 shall be calculated as if the participant had died on the election date. Notwithstanding the foregoing, eligibility of a spouse for any benefits shall be based on the participant's marital status and the duration of the marriage as of the actual date of death.

(c) The balance in the participant's program account shall be distributed pursuant to Section 31776.4.

31774. If a participant becomes eligible for disability retirement due to an injury or illness occurring during the program period or pursuant to Section 31720.5, 31720.6, or 31720.7, the participant shall elect to either:

(a) Retire for disability, in which case the participant may apply for conversion of the deferred retirement allowance to a disability allowance calculated at the election date and the employee shall retain all of the proceeds in the program account.

(b) Retire for service, in which case the participant shall waive any rights he or she may have to disability retirement benefits, except as provided in Section 31720.5, 31720.6, or 31720.7, and shall be entitled to a distribution of the balance in his or her program account and a monthly retirement allowance, as provided in Section 31776.1.

31775. Participation in the program shall be terminated, and the member will not have a right or claim to any continuing benefits under the program upon the first occurrence of any of the following events:

(a) Revocation of participation, as provided in subdivision (b) of Section 31771.2.

(b) Involuntary termination of employment. If a termination for cause is reversed, a member's participation in the program shall be reinstated and the member shall be made whole for the duration of the original program period, as designated by the member upon entry into the program.

(c) Commencement of disability retirement benefits, as provided in subdivision (a) of Section 31774.

31776. Participation in the program shall be completed and the participant shall be entitled to benefits under the program upon the first occurrence of either of the following during the program period:

(a) Retirement of the participant for service.

(b) Death of the participant.

31776.1. Upon termination of employment and retirement for service under the system, a participant shall:

(a) Receive a distribution, in the manner prescribed in Section 31776.3, of the balance in the participant's program account.

(b) Begin receiving a monthly retirement allowance in an amount calculated pursuant to Section 31776.2.

(c) Waive the right to any disability retirement benefits from the system, except for postretirement disability rights. This waiver does not include any rights the member may have pursuant to Sections 31720.5, 31720.6, and 31720.7.

31776.2. The participant's monthly allowance shall be an amount equal to the monthly allowance the participant would have received if he or she had retired for service on the election date, subject to the following:

(a) Any unused sick leave or vacation leave that accrued as of the election date and was not used by the participant during the program period may be included in the calculation of the participant's allowance in accordance with a collective bargaining agreement, subject to other retirement rules for members not participating in the program.

(b) The participant's allowance may be adjusted in accordance with the implementing ordinance for some or all of the cost-of-living adjustments that the participant would have received during the program period as if the participant had retired on the election date.

(c) The participant's allowance shall be adjusted based on any election by the participant of any optional retirement allowance pursuant to Article 11 (commencing with Section 31760). The adjustment shall be based on the ages of the participant and, if applicable, the participant's spouse or beneficiary as of the retirement date.

(d) The provisions of Article 15 (commencing with Section 31830) shall apply for purposes of calculating the participant's allowance. The participant shall be deemed to have retired on the retirement date for purposes of determining whether the member retired concurrently under both systems as required under this article.

31776.3. (a) Unless the implementing ordinance otherwise provides, the balance in the participant's program account shall be distributed to the participant in a single lump-sum payment at the time of retirement. If requested by the participant, the payment may be immediately deposited into a qualified tax-deferred account established by the participant.

(b) The implementing ordinance may provide one or more of the following optional forms of distribution for a participant's account:

(1) Substantially level installment payments over 240 months starting with the date that the member leaves DROP. The balance in the participant's account during the installment payout period shall be credited with interest at the same rate, if any, as is being credited to program accounts for currently active members. A cost-of-living adjustment may not be made to the monthly amount being paid pursuant to this paragraph.

(2) An annuity in a form established by the board and subject to the applicable provisions of the Internal Revenue Code that shall be the actuarial equivalent of the balance in the participant's program account on the retirement date. The ''actuarial equivalent'' under this paragraph shall be determined on the same basis as is used for determining optional settlements at retirement for a member's monthly retirement allowance.

(c) Notwithstanding any other provision of this article, a participant, nonparticipant spouse, or beneficiary may not be permitted to elect a distribution under this article that does not satisfy the requirements of Section 401(a)(9) of Title 26 of the United State Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder.

(d) The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution to the participant, the lump-sum payment shall be made, at the participant's option, not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 and one-half years (or age determined by the Internal Revenue Service) or the calendar year in which the participant terminates all employment for the employer.

(2) In the case of a distribution to the participant in the form of installment payments or an annuity, payment shall begin, at the participant's option, not later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 and one-half years (or age determined by the Internal Revenue Service) or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(3) In the case of a benefit payable on account of the participant's death, distribution shall be paid at the option of the beneficiary, no later than December 31 of the calendar year in which the first anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions shall commence on or before the later of either:

(A) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(B) December 31 of the calendar year in which the participant would have attained the age of 70 and one-half years (or age determined by the Internal Revenue Service).

31776.4. (a) A participant may designate a person or persons as beneficiaries of the balance in the participant's program account at any time during the program period. Any beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and filed with the board.

(b) The participant's beneficiary designation may not be given effect and shall be overridden to the extent that designation would impair the rights of any surviving spouse or surviving minors under applicable federal or state law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the participant's program account upon the death of the participant.

(d) The nomination of a beneficiary or beneficiaries under this section may be revoked at the pleasure of the person who made the nomination and a different beneficiary or beneficiaries may be nominated by a written designation duly executed and filed with the board.

(e) If the participant dies without a valid beneficiary designation on file, or if no designated beneficiary survives the participant, any balance remaining in the participant's account shall be payable to the participant's estate.

31776.5. The final compensation calculated under Section 31776.2 shall be the member's final compensation for purposes of calculating any reciprocal benefits due the member from another retirement system pursuant to Article 15 (commencing with Section 31830).

31777. (a) The provisions of this section shall be referred to as the ''actuarial equivalent DROP provisions.''

(b) A member who retires for service on or after the operative date of the program may elect, on a form prescribed by the board, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this section in lieu of the monthly allowance that would otherwise be payable to the member pursuant to this chapter.

(c) A member who has elected to participate in the forward DROP provisions of the program, pursuant to Sections 31771 to 31776.5, inclusive, or the backward DROP provisions of the program, pursuant to Sections 31778 to 31778.2, inclusive, is not eligible to make the election provided under this section.

(d) (1) A member who makes the election described in this section shall receive a one-time lump-sum payment at the time of retirement in an amount chosen by the member that may not exceed the maximum

amount specified in the implementing ordinance, as provided in subdivision (e).

(2) The amount of the lump-sum payment shall be calculated in accordance with the implementing ordinance.

(e) The implementing ordinance shall prescribe one of the following amounts as the maximum amount of the lump-sum payment under this section:

(1) The aggregate amount of the member's contributions to the system, plus interest if applicable.

(2) The actuarial present value of 20 percent of the monthly allowance otherwise payable to the member under this chapter.

(3) An amount that would cause the member's monthly allowance under this chapter to be actuarially reduced to an amount equal to 50 percent of the member's final compensation.

(f) Notwithstanding any other provision of this chapter, a member who makes the election described in this section shall receive a monthly allowance pursuant to this chapter that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (d).

31778. The provisions of this section through those of Section 31778.2, inclusive, shall be referred to collectively as the ''backward DROP provisions.'' A member who retires on or after the effective date of the program may elect upon application for service or disability retirement, on a form prescribed by the board, to receive:

(a) A backward DROP payment calculated under Section 3l778.1.

(b) A monthly retirement allowance calculated as if the member had retired on the deferred retirement calculation date, except that the retirement formula applicable to the member's service as of the election date shall be used to calculate the amount of the member's monthly retirement allowance.

31778.1. A member who makes the election described in Section 31778 shall receive a one-time lump-sum payment upon retirement in an amount as calculated below.

(a) A participant's program account shall be credited with an amount equal to the retirement allowance the member would have received if the member had retired on the deferred retirement calculation date and had selected an unmodified allowance.

(b) The cost-of-living adjustments that would have been applicable during that period shall be included, applying the deferred retirement calculation date as the base year for the adjustment.

(c) All of the normal contributions that the member made under this chapter, plus interest applicable during the period from the deferred retirement calculation date to the election date.

(d) Some or all of the employer contributions made on account of the participant under this chapter, as agreed to in a collective bargaining

agreement, plus interest applicable for the period from the deferred retirement calculation date to the election date.

(e) The member's program payment shall be the amount calculated under subdivision (a) multiplied by the number of months in the deferred retirement period, plus the cost-of-living adjustment calculated under subdivision (b), the member contributions calculated under subdivision (c), and the employer contributions calculated under subdivision (d). The amount shall also include interest at a rate agreed upon in the collective bargaining agreement and adopted by the board of retirement, applicable to the amounts derived from subdivisions (a) and (b), for the period from the deferred retirement calculation date to the election date. The program payment shall also be credited with interest at a rate established by the board for the period from the election date until the payment is made.

31778.2. (a) If a participant dies during the period from the deferred calculation date to the election date, he or she shall be deemed to have died while eligible for the deferred retirement option and the participant's eligible spouse or other beneficiary shall be qualified to elect the deferred retirement option under Section 31778 as if the participant were still living, except as provided in subdivisions (b) and (c).

(b) Benefits under Article 12 (commencing with Section 31780) or, if applicable, Section 31765, 31765.1 or 31765.11 shall be calculated as if the participant had died on the deferred retirement calculation date. Notwithstanding the foregoing, eligibility of a spouse for any benefits shall be based on the participant's marital status and the duration of the marriage as of the actual date of death.

(c) The balance in the participant's program account shall be distributed pursuant to Section 31778.3.

31778.3. (a) A participant may designate a person or persons as beneficiaries of the participant's program account at any time during the period from the deferred retirement calculation date to the election date. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and filed with the board.

(b) The participant's beneficiary designation may not be given effect, and shall be overridden, to the extent that designation would impair the rights of any surviving spouse or surviving minors under applicable federal or state law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the participant's program account upon the death of the participant.

(d) The nomination of a beneficiary or beneficiaries under this section may be revoked at the pleasure of the person who made the nomination,

and a different beneficiary or beneficiaries may be nominated by a written designation duly executed and filed with the board.

(e) If the participant dies without a valid beneficiary designation on file, or if no designated beneficiary survives the participant, the participant's account shall be payable to the participant's estate.

31778.4. Upon termination of employment and retirement from the system, a member who has elected to participate in the program shall receive the member's program payment, as calculated pursuant to Section 31778.1 and in accordance with the distribution provisions of Sections 31776.3, 31776.4, and 31776.5.

31779. (a) After the program has been in effect for a period of at least four years and not more than 10 years, as specified in the implementing ordinance, or up to one year prior to the end of that specified period, the board shall cause an actuarial analysis of the cost impact of the program to be prepared and presented to the board of supervisors or governing body of the district for its review and consideration.

(b) If the actuarial analysis discloses that the program has not been cost neutral, the board of supervisors or governing board shall, by ordinance or resolution pursuant to a collective bargaining agreement with the bargaining unit, either:

(1) Discontinue the program, subject to Section 31779.1.

(2) Modify the program in a manner consistent with the actuarial analysis and the provisions of this article so that the program will be cost neutral.

31779.1. The rights of a participant who has retired under the program, whose deferred retirement calculation date, or whose program period is in effect at the time the program is discontinued may not be affected by the discontinuance of the program and that participant shall remain subject to the provisions of the program as it existed on the participant's election date.

31779.2. If the program is modified pursuant to paragraph (2) of subdivision (b) of Section 31779, participants who entered, or who were eligible for, the program prior to the effective date of the modification shall be entitled to elect whether to become subject to the modified provisions of the program or to remain subject to the program as it existed on the participant's deferred retirement calculation date or election date, whichever occurred first.

31779.3. As long as the program remains in effect, either as originally adopted or as modified pursuant to paragraph (2) of subdivision (b) of Section 31779, the board of retirement shall cause an actuarial analysis of the cost impact of the program to be prepared as provided in Section 31779 at the end of each successive period specified in the implementing ordinance or subsequently adopted by ordinance or

resolution, and the board of supervisors or governing body may take the actions described in Section 31779 as appropriate based on the outcome of that analysis.

CHAPTER 898

An act to amend Section 60242 of the Education Code, relating to instructional materials.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive. A school district may purchase with funds received pursuant to Chapter 3.25 (commencing with Section 60420) instructional materials for the visual and performing arts, foreign language, health, or any other curricular area if those materials are adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive, and if the school district certifies that it has provided each pupil with a standards-aligned textbook or basic instructional materials in reading/language arts, mathematics, history/social science, and science.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding under this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan. A charter school may apply for funding on its own behalf or through its chartering entity. Notwithstanding Section 47610, a charter school applying on its own behalf is required to develop and certify approval of a classroom library plan.

(3) To the extent that a school district, county office of education, or charter school already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 2. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive. A school district may purchase with funds received pursuant to Chapter 3.25 (commencing with Section 60420) instructional materials for the visual and performing arts, foreign language, health, or any other curricular area if those materials are adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive, and if the school district certifies that it has provided each pupil with a standards-aligned textbook or basic instructional materials in reading/language arts, mathematics, history/social science, and science.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding pursuant to this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan.

(3) To the extent that a school district or county office of education already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 3. Section 2 of this bill incorporates amendments to Section 60242 of the Education Code proposed by both this bill and AB 1137. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 60242 of the Education Code, and (3) this bill is enacted after AB 1137, in which case Section 1 of this bill shall not become operative.

CHAPTER 899

An act to amend Section 674.6 of, to add Section 674.9 to, and to add Chapter 5 (commencing with Section 11890) to Part 3 of Division 2 of,

the Insurance Code, and to amend Section 14126.02 of the Welfare and Institutions Code, relating to long-term care facilities.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 674.6 of the Insurance Code is amended to read:

674.6. (a) No insurer issuing policies of insurance subject to Section 674.5 or 675 shall cease to offer any particular line of coverage without prior notification to the commissioner.

(b) Except as provided in Section 674.9, an insurer shall notify the department at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of (1) commercial liability insurance, (2) any insurance defined in Section 660 or 675 when coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, (3) any other insurance defined in Section 660, or (4) any insurance issued to an individual or individuals covering a risk not arising from a business or commercial activity. Upon receipt of the notice, the commissioner may request and review additional information, as deemed necessary, and investigate the market conditions to determine whether that insurance may become not readily available in the voluntary insurance market as a result of the withdrawal.

(c) For purposes of this section, ''intent to substantially withdraw'' means an insurer's intent to nonrenew in excess of 50 percent of its current policyholders in the line of coverage upon their next renewal.

(d) The commissioner shall adopt appropriate rules, regulations, and standards for purposes of implementing this section.

(e) Any insurer that has notified the commissioner pursuant to subdivision (b) shall (1) notify the commissioner within 10 days after the date given in the withdrawal notice if the insurer does not in fact withdraw that line of insurance from the market, or (2) notify the commissioner within 10 days after reentry if the insurer reenters that line after the withdrawal.

SEC. 2. Section 674.9 is added to the Insurance Code, to read:

674.9. (a) Notwithstanding subdivision (b) of Section 674.6, an insurer issuing policies of liability insurance to long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly shall notify the department at least 90 days prior to the date it intends to cease,

withdraw, or substantially withdraw from offering liability policies to those facilities or physicians.

(b) Each insurer writing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly shall, by a date to be set by the commissioner, but in any event no later than July 1 of each calendar year, report to the commissioner information specified by him or her regarding liability policies for those facilities or physicians. The information shall include, but not be limited to, the following:

(1) Whether the insurer is writing coverage for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly, including new and renewal policies, and the types of policies it is writing.

(2) The number and types of long-term health care facilities or residential care facilities for the elderly and beds covered.

(3) The total amount of premiums from insureds, both written and earned, during the immediately preceding five calendar years.

(4) The total number of claims received, including the amount per claim.

(5) The number of claims incurred, together with the monetary amount reserved for loss and defense and cost containment expense for the immediately preceding accident year or report year.

(6) The number of claims closed with payment during the immediately preceding five calendar years, the total monetary amount paid for loss thereon, reported by the year the claim was incurred, and the total defense and cost containment expense paid thereon, reported by the year the claim was incurred.

(7) The monetary amount paid on claims, including the amount paid per claim, during the immediately preceding five calendar years to be reported separately by the year the claim was incurred, with defense and cost containment expense paid.

(8) The number of claims closed without payment during the immediately preceding five calendar years, reported by the year the claim was incurred, and the defense and cost containment expense paid thereon.

(9) The monetary amount reserved in the annual statement for loss and defense cost containment expense for the immediately preceding calendar year for outstanding claims incurred but not reported to the insurer.

(10) The number and types of lawsuits filed against the insureds in the immediately preceding calendar year.

(11) Annualized information on investment income or loss, which shall be consistent with the reported information provided by insurers to the National Association of Insurance Commissioners.

(c) For the purposes of information collection conducted pursuant to this section, first priority shall be given by the department and commissioner to collecting and compiling information from insurers concerning long-term health care facilities and physicians providing services in those facilities, and, to the extent that departmental resources allow, secondary priority shall then be given to the collecting and compiling of information concerning residential care facilities for the elderly and the physicians who provide services in those facilities.

(d) Information that is collected for long-term health care facilities and the physicians for those facilities shall be collected, maintained, analyzed, and reported separately from information that is collected, maintained, analyzed, and reported concerning residential care facilities for the elderly, and the physicians for those facilities.

(e) As used in this section, ''long-term health care facility'' has the same meaning as that term is defined in Section 1418 of the Health and Safety Code.

(f) As used in this section, ''residential care facilities for the elderly'' has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

(g) Information collected by the department pursuant to this section shall be deemed official information and subject to the disclosure protections of Section 1040 of the Evidence Code. Nothing in this section shall require individualized information that would identify the amount paid by a specific insurer or facility to be released. However, nothing in this subdivision shall prevent the department from preparing reports and policy recommendations based on the data collected pursuant to this section.

SEC. 3. Chapter 5 (commencing with Section 11890) is added to Part 3 of Division 2 of the Insurance Code, to read:

CHAPTER 5. MARKET ASSISTANCE PROGRAM FOR LONG-TERM HEALTH CARE FACILITY LIABILITY INSURANCE

11890. As used in this chapter:

(a) ''Long-term health care facility'' has the same meaning as that term is defined in Section 1418 of the Health and Safety Code.

(b) ''Residential care facilities for the elderly'' has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

11891. (a) If the commissioner finds after a public hearing that liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the

provision of services to residents in long-term health care facilities or residential care facilities for the elderly is not readily available in the voluntary insurance market, and that the public interest requires this availability, the commissioner may authorize the formation of a market assistance program to assist in securing that insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly. The commissioner may require insurers, agents, and brokers to attend public hearings and meetings concerning either the need for a market assistance program or the organization and formation of a program. The commissioner may also assist in securing insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly for which commercial liability insurance is not readily available by forming a risk pooling arrangement as permitted by the Federal Liability Risk Retention Act of 1986.

(b) The commissioner may develop appropriate standards and regulations to implement the market assistance program and risk pooling arrangement authorized by this section.

11892. (a) The commissioner may order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, constituting a legal entity separate and distinct from all its members. The purpose of the association shall be to provide a market for liability insurance on a self-supporting basis, without subsidy from association members.

(b) If the commissioner determines after a public hearing that liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly is readily available through the voluntary market, the association created pursuant to subdivision (a) shall cease its underwriting operations.

(c) The commissioner may develop appropriate standards and regulations to implement the joint underwriting association authorized by this section.

SEC. 4. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable

state and federal requirements, and encourages administrative efficiency.

(b) (1) The department shall implement a facility-specific ratesetting system by August 1, 2004, subject to federal approval and the availability of federal or other funds, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities.

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities to include, but not be limited to, consideration of the following:

(A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.

(B) Facility specific case mix factors.

(C) Direct care labor based factors.

(D) Geographic or regional differences in the cost of operating facilities and providing resident care.

(E) Facility-specific cost based rate models used in other states.

(c) The department shall submit to the Legislature a status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004.

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The ratesetting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 5. Sections 1 to 3, inclusive, of this act shall only be implemented if funds for these purposes are available from the Insurance Fund.

CHAPTER 900

An act to amend Sections 4514.3, 4582.7, and 4582.75 of, and to add Section 4582.71 to, the Public Resources Code, relating to natural resources.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 4514.3 of the Public Resources Code is amended to read:

4514.3. (a) Timber operations conducted pursuant to this chapter are exempt from the waste discharge requirements of Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code as long as both the federal Environmental Protection Agency and the State Water Resources Control Board certify after January 1, 2003, that the provisions of this chapter constitute best management practices for silviculture pursuant to Section 208 of the Federal Water Pollution Control Act.

(b) The exemption contained in subdivision (a) does not apply when any of the following occurs:

(1) The board requests issuance of waste discharge requirements.

(2) There has been a finding by the State Water Resources Control Board that the board has failed to maintain a water quality regulatory process consistent with the certification required under subdivision (a).

(3) After monitoring the water quality impacts from timber operations conducted in compliance with this chapter, there has been a finding by the State Water Resources Control Board that compliance with best management practices would result in less water quality protection than required in water quality control plans approved pursuant to Section 13245 of the Water Code.

SEC. 2. Section 4582.7 of the Public Resources Code is amended to read:

4582.7. (a) The director shall have 30 days from the date that the initial inspection is completed (10 of these days shall follow the date of final interagency review) or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the final review and public comment period has ended, the director shall have up to 15 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation

measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter.

(b) If the director determines that the timber harvesting plan is not in conformance with the rules and regulations of the board or with this chapter, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board, and timber operations may not commence.

(c) A person to whom a timber harvesting plan is returned may, within 10 days from the date of receipt of the plan, request of the board a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if the plan is in conformance with the rules and regulations of the board and with this chapter. Timber operations shall await board approval of the plan. Board action shall occur within 30 days from the date of the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal.

(d) If the timber harvesting plan is not approved on appeal to the board, the plan may be found to be in conformance by the director within 10 days from the date of the board action, provided that the plan is brought into full conformance with the rules and regulations of the board and with this chapter. If the director does not act within 25 days or a longer period mutually agreed upon by the director and the person submitting the plan, timber operations may commence pursuant to the plan, and all provisions of the plan shall be followed as provided in this chapter.

(e) Upon the request of a responsible agency, the director shall consult with that agency, pursuant to this chapter, but the director, or his or her designee within the department, shall have the final authority to determine whether a timber harvesting plan is in conformance with the rules and regulations of the board and with this chapter for purposes of approval by the department.

SEC. 3. Section 4582.71 is added to the Public Resources Code, to read:

4582.71. (a) A timber harvesting plan may not be approved if the appropriate regional water quality control board finds, based on substantial evidence, that the timber operations proposed in the plan will result in a discharge into a watercourse that has been classified as impaired due to sediment pursuant to subsection (d) of Section 303 of the Federal Water Pollution Control Act, that causes or contributes, to a violation of the regional water quality control plan.

(b) The exercise of a regional water quality control board's authority pursuant to subdivision (a) may be delegated to the executive officer of that regional water quality control board as long as the executive officer's determination is subject to review by that regional water quality

control board upon request of the person that has submitted the timber harvesting plan or upon motion of that regional water quality control board.

(c) If the appropriate regional water quality control board makes a finding pursuant to subdivision (a), the executive officer of that regional water quality control board shall, before the close of the public comment period under Section 4582.7, notify the director in writing of the finding and advise the director that the plan may not be approved. If the issues that lead to a regional water quality control board's finding pursuant to subdivision (a) cannot be resolved during the director's determination period under Section 4582.7 or a longer period that is mutually agreeable to the director and the person that submitted the timber harvesting plan, the director shall deny the timber harvesting plan and return the plan to the person that submitted it. The director shall advise the person that submitted the timber harvesting plan of the reasons why the plan is being returned.

SEC. 4. Section 4582.75 of the Public Resources Code is amended to read:

4582.75. The rules adopted by the board and the provisions of this chapter shall be the only criteria employed by the director when reviewing timber harvesting plans pursuant to Section 4582.7.

SEC. 5. It is the Legislature's intent that the relevant policy committees of the Legislature, with the assistance of appropriate state agencies, including, but not limited to, the State Water Resources Control Board, the Department of Forestry and Fire Protection, and the Department of Fish and Game, should assess the impact of this bill after it has been implemented for a period of at least three, but not more than five, years. It is the Legislature's intent to assess the impact of the bill on water quality, fish and wildlife habitat, and other environmental conditions, as well as on economic conditions pertaining to timber, fishing, and other industries that may be significantly affected by the provisions of this bill.

CHAPTER 901

An act to add Article 6 (commencing with Section 10237) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10229 of, the Business and Professions Code, relating to real estate.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 10229 of the Business and Professions Code is repealed.

SEC. 2. Article 6 (commencing with Section 10237) is added to Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

Article 6. Claim of Exemption From Securities Qualification

10237. Any transaction that involves the sale of or offer to sell a series of notes secured directly by interests in one or more parcels of real property, or the sale of undivided interests in a note secured directly by one or more parcels of real property equivalent to a series transaction, shall comply with all of the provisions of this article.

10238. (a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10237 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10237:

_____

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

_____

6. Street address (main location):

_____

and Street City State ZIP Code

7. Mailing address (if different from "6"):

_____

8. Servicing agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10237 (including the undersigned Broker if that is the case):

_____

_____

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the multilender's notes: _____

11. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (k) of Section 10238).

CHECK ONLY ONE OF THE FOLLOWING:

( ) The undersigned Broker is (or expects to be) required to filereports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

( ) The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

12. Signature. The contents of this notice are true and correct.

_____ _____
Date Type Name of Broker

_____
Signature of Broker or of Designated Officer of Corporate Broker

_____
Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(b) A broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by subdivision (a) with the commissioner within 30 days after becoming the servicing agent.

(c) All advertising employed for transactions under this article shall show the name of the broker and comply with Section 10235 and Sections 260.302 and 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to

a prospective investor that a transaction is conducted under this article may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(d) Each parcel of real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term ''promotional note'' does not include either of the following:

(1) A note that was executed in excess of three years prior to being offered for sale.

(2) A note secured by a first trust deed on real property in a subdivision that evidences a bona fide loan made in connection with the financing of the usual cost of the development in a residential, commercial, or industrial building or buildings on the property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period for the filing of mechanic's and materialmen's liens.

(e) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property securing the loan, or any contractual right to acquire, lease, or develop the property securing the loan. This provision does not prohibit a broker from conducting the following transactions if, in either case, the disclosure statement furnished by the broker pursuant to subdivision (*l*) discloses the interest of the broker or affiliate in the transaction and the circumstances under which the broker or affiliate acquired the interest:

(1) A transaction in which the broker or an affiliate of the broker is acquiring the property pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(2) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(f) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

_____

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual and the individual's spouse or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The ''institutional investors'' enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(6) A partnership, limited liability company, corporation, or other organization that was not specifically formed for the purpose of

purchasing the security offered in reliance upon this exemption from securities qualification is counted as one person.

(g) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(h) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of each parcel of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

(A)	Single-family residence, owner occupied	80%
(B)	Single-family residence, not owner occupied	75%
(C)	Commercial and income-producing properties	65%
(D)	Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development	50%
(F)	Other real property	35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent

of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the notes or interests, shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, ''appraisal'' means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, the term ''current market value'' may be deemed to be the value of the completed project if the following safeguards are met:

(A) An independent neutral third-party escrowholder is used for all deposits and disbursements.

(B) The loan is fully funded, with the entire loan amount to be deposited in escrow prior to recording of the deed or deeds of trust.

(C) A comprehensive, detailed, draw schedule is used to ensure proper and timely disbursements to allow for completion of the project.

(D) The disbursement draws from the escrow account are based on verification from an independent qualified person who certifies that the work completed to date meets the related codes and standards and that the draws were made in accordance with the construction contract and draw schedule. For purposes of this subparagraph, ''independent qualified person'' means a person who is not an employee, agent, or affiliate of the broker and who is a licensed architect, general contractor, structural engineer, or active local government building inspector acting in his or her official capacity.

(E) An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(F) In addition to the transaction documentation required by subdivision (i), the documentation shall include a detailed description of actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes.

(G) The entire amount of the loan does not exceed two million five hundred thousand dollars ($2,500,000).

(5) If a note or an interest will be secured by more than one parcel of real property, for the purpose of determining the maximum amount of the note or interest, each security property shall be assigned a portion of the note or interest which shall not exceed the percentage of current market value determined by, and in accordance with, the provisions of paragraphs (1) and (2).

(i) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or notes and (2) the holders of more than 50 percent of the recorded beneficial interests of the notes or interests may govern the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

(j) (1) The broker shall not accept any purchase or loan funds or other consideration from a prospective lender or purchaser, or directly or indirectly cause the funds or other consideration to be deposited in an escrow or trust account, except as to a specific loan or note secured by a deed of trust that the broker owns, is authorized to negotiate, or is unconditionally obligated to buy.

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this article shall be construed as modifying or superseding applicable law regulating the escrowholder in any transaction or the handling of the escrow account.

(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this article and the receipt and disbursement of funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (k), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (k), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this article with respect to the handling and distribution

of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this article during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this article during the period for which the examination is conducted, whichever is greater.

(5) For the purposes of this subdivision, the transaction that constitutes a "sale" is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this article, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The accountant shall inspect for compliance with the following specific provisions of this section: paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1) and (2) of subdivision (k).

(6) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(k) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The

broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this article. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this article does not authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker or person who is or becomes the servicing agent for notes or interests sold pursuant to this article upon which the payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected by an independent certified public accountant at no less than three-month intervals during the time the volume is maintained. Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (5) of subdivision (j). If the broker is required to file an annual report pursuant to subdivision (o) or pursuant to Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the

purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

(B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.

(*l*) The broker shall disclose in writing to each purchaser or lender the material facts concerning the transaction on a disclosure form adopted or approved by the commissioner pursuant to Section 10232.5, subject to the following:

(1) The disclosure form shall include a description of the terms upon which the note and deed of trust are being sold, including the terms of the undivided interests being offered therein, including the following:

(A) In the case of the sale of an existing note:

(i) The aggregate sale price of the note.

(ii) The percent of the premium over or discount from the principal balance plus accrued but unpaid interest.

(iii) The effective rate of return to the purchasers if the note is paid according to its terms.

(iv) The name and address of the escrowholder for the transaction.

(v) A description of, and the estimated amount of, each cost payable by the seller in connection with the sale and a description of, and the estimated amount of, each cost payable by the purchasers in connection with the sale.

(B) In the case of the origination of a note:

(i) The name and address of the escrowholder for the transaction.

(ii) The anticipated closing date.

(iii) A description of, and the estimated amount of, each cost payable by the borrower in connection with the loan and a description of, and the estimated amount of, each cost payable by the lenders in connection with the loan.

(C) In the case of a transaction involving a note or interest secured by more than one parcel of real property, in addition to the requirements of subparagraphs (A) and (B):

(i) The address, description, and estimated fair market value of each property securing the loan.

(ii) The amount of the available equity in each property securing the loan after the loan amount to be apportioned to each property is assigned.

(iii) The loan to value percentage for each property after the loan amount to be apportioned to each property is assigned pursuant to subdivision (h).

(2) A copy of the written statement or information contained therein, as required by paragraph (2) of subdivision (h), shall be included in the disclosure form.

(3) Any interest of the broker or affiliate in the transaction, as described in subdivision (e), shall be included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material or essential to keep the information provided in the form from being misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(5) If more than one parcel of real property secures the notes or interests, the disclosure form shall also fully disclose any risks to investors associated with securing the notes or interests with multiple parcels of real property.

(m) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(n) No agreement in connection with a transaction covered by this article shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(o) Each broker who conducts transactions under this article, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this article and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(p) Each broker conducting transactions pursuant to this article, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as

well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

10239. The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by this article. Nothing in this article shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this article shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

10239.1. Nothing in this article shall be construed to change the agency relationships between the parties where they exist or limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests in transactions subject to this article.

10239.2. For the purposes of this article, the following definitions shall apply:

(a) ''Broker'' means a person licensed as a broker under this part.

(b) ''Affiliate'' means a person controlled by, controlling, or under common control with, the broker.

(c) ''Servicing agent'' means the real estate broker or person exempted from the licensing requirements for real estate brokers under this chapter, to act as agent for the purchasers or lenders to service the notes and deeds of trust, including the handling the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default.

(d) Except as provided in paragraph (5) of subdivision (j) of Section 10238, the terms ''sale'' and ''offer to sell,'' shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction.

10239.3. (a) If any person other than a real estate broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this article, the provisions of this article and of any regulation or order issued under this section shall apply to the person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if the person were the broker.

(b) If any person other than an affiliate of a broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this article, or in the case of an affiliate other than a parent or subsidiary of the broker, the provisions of this article and of any regulation or order issued under this article shall apply to the person with respect to those books, accounts, and other records to the same extent as if the person were the affiliate.

10239.4. This article applies only to the exemption from securities qualification claimed under Section 25102.5 of the Corporations Code. This article does not apply to any other exemption from securities qualification, including subdivision (e) of Section 25102 of the Corporations Code, which may be claimed without complying with this article, or to any permit to qualify the offer and sale of securities under the Corporate Securities Law of 1968. A real estate broker, when engaging in acts for which a license is required, who arranges a transaction pursuant to this article or pursuant to an offering subject to the Corporations Code, shall clearly indicate in the broker's transaction file the provision of the Corporate Securities Law of 1968 pertaining to qualification or exemption from qualification under which the transaction is being conducted, and shall retain this information for the period specified in subdivision (a) of Section 10148.

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 902

An act to amend Sections 10177 and 10233 of, to add Article 6 (commencing with Section 10237) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10229 of, the Business and Professions Code, and to amend Section 25102.5 of the Corporations Code, relating to real estate.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an

officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

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

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

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

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

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

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

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

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

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

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

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

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

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

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

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 2. Section 10229 of the Business and Professions Code is repealed.

SEC. 3. Section 10233 of the Business and Professions Code is amended to read:

10233. A real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract shall comply with each of the following requirements:

(a) The licensee shall have a written authorization from the borrower, the lender, or the owner of the note or contract, that is included within the terms of a written servicing agreement that satisfies the requirements of subdivision (k) of Section 10238.

(b) The licensee shall provide the lender or the owner of the note or contract with at least the following accountings:

(1) An accounting of the unpaid principal balance at the end of each year.

(2) An accounting of collections and disbursements received and made during each year.

(3) Each accounting required under this subdivision shall identify the person who holds the original note or contract and the deed of trust evidencing and securing the debt or obligation for which the accounting has been provided.

(c) The licensee shall provide to the lender or the owner of the note or contract written notification within 15 days of the occurrence of any of the following events:

(1) The recording of a notice of default.

(2) The recording of a notice of trustee's sale.

(3) The receipt of any payment constituting an amount greater than or equal to five monthly payments, together with a request for partial or total reconveyance of the real property, in which case the notice shall also indicate any further transfer or delivery instructions.

(4) The delinquency of any installment or other obligation under the note or contract for over 30 days.

SEC. 4. Article 6 (commencing with Section 10237) is added to Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

Article 6. Claim of Exemption From Securities Qualification

10237. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the provisions of this article.

10238. (a) A notice in the following form and containing the following information shall be filed with the commissioner within 30

days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10237 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10237:

_____

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

_____

6. Street address (main location):

_____
and Street City State ZIP Code

7. Mailing address (if different from "6"):

_____

8. Servicing agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10237 (including the undersigned Broker if that is the case):

_____

_____

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the multilender's notes: _____

11. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (k) of Section 10238).

CHECK ONLY ONE OF THE FOLLOWING:

( ) The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

( ) The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

12. Signature. The contents of this notice are true and correct.

_____ _____

Date Type Name of Broker

Signature of Broker or of Designated Officer of Corporate Broker

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(b) A broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by subdivision (a) with the commissioner within 30 days after becoming the servicing agent.

(c) All advertising employed for transactions under this article shall show the name of the broker and comply with Section 10235 and Sections 260.302 and 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to a prospective investor that a transaction is conducted under this article may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(d) The real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term ''promotional note'' does not include either of the following:

(1) A note that was executed in excess of three years prior to being offered for sale.

(2) A note secured by a first trust deed on real property in a subdivision that evidences a bona fide loan made in connection with the financing of the usual cost of the development in a residential,

commercial, or industrial building or buildings on the property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period for the filing of mechanic's and materialmen's liens.

(e) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property securing the loan, or any contractual right to acquire, lease, or develop the property securing the loan. This provision does not prohibit a broker from conducting the following transactions if, in either case, the disclosure statement furnished by the broker pursuant to subdivision (*l*) discloses the interest of the broker or affiliate in the transaction and the circumstances under which the broker or affiliate acquired the interest:

(1) A transaction in which the broker or an affiliate of the broker is acquiring the property pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(2) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(f) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual and the individual's spouse or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The ''institutional investors'' enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(6) A partnership, limited liability company, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption from securities qualification is counted as one person.

(g) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(h) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

(A)	Single-family residence, owner occupied	80%
(B)	Single-family residence, not owner occupied	75%
(C)	Commercial and income-producing properties	65%
(D)	Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development	50%
(F)	Other real property	35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (*l*).

(3) A copy of the appraisal or the broker's evaluation shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, ''appraisal'' means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, the term ''current market value'' may be deemed to be the value of the completed project if the following safeguards are met:

(A) An independent neutral third-party escrow holder is used for all deposits and disbursements.

(B) The loan is fully funded, with the entire loan amount to be deposited in escrow prior to recording of the deed or deeds of trust.

(C) A comprehensive, detailed, draw schedule is used to ensure proper and timely disbursements to allow for completion of the project.

(D) The disbursement draws from the escrow account are based on verification from an independent qualified person who certifies that the work completed to date meets the related codes and standards and that the draws were made in accordance with the construction contract and draw schedule. For purposes of this subparagraph, ''independent qualified person'' means a person who is not an employee, agent, or affiliate of the broker and who is a licensed architect, general contractor, structural engineer, or active local government building inspector acting in his or her official capacity.

(E) An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(F) In addition to the transaction documentation required by subdivision (i), the documentation shall include a detailed description of actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes.

(G) The entire amount of the loan does not exceed two million five hundred thousand dollars ($2,500,000).

(i) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or notes and (2) the holders of more than 50 percent of the recorded beneficial interests of the notes or interests may govern the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

(j) (1) The broker shall not accept any purchase or loan funds or other consideration from a prospective lender or purchaser, or directly or indirectly cause the funds or other consideration to be deposited in an escrow or trust account, except as to a specific loan or note secured by a deed of trust that the broker owns, is authorized to negotiate, or is unconditionally obligated to buy.

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to

the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this article shall be construed as modifying or superseding applicable law regulating the escrowholder in any transaction or the handling of the escrow account.

(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this article and the receipt and disbursement of funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (k), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (k), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this article with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this article during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this article during the period for which the examination is conducted, whichever is greater.

(5) For the purposes of this subdivision, the transaction that constitutes a "sale" is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this article, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The accountant shall inspect for compliance with the following specific provisions of this section: paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1) and (2) of subdivision (k).

(6) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in

accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(k) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this article. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this article does not authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker or person who is or becomes the servicing agent for notes or interests sold pursuant to this article upon which the payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the

number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected by an independent certified public accountant at no less than three-month intervals during the time the volume is maintained. Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (6) of subdivision (j). If the broker is required to file an annual report pursuant to subdivision (o) or pursuant to Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

(B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.

(*l*) The broker shall disclose in writing to each purchaser or lender the material facts concerning the transaction on a disclosure form adopted or approved by the commissioner pursuant to Section 10232.5, subject to the following:

(1) The disclosure form shall include a description of the terms upon which the note and deed of trust are being sold, including the terms of the undivided interests being offered therein, including the following:

(A) In the case of the sale of an existing note:

(i) The aggregate sale price of the note.

(ii) The percent of the premium over or discount from the principal balance plus accrued but unpaid interest.

(iii) The effective rate of return to the purchasers if the note is paid according to its terms.

(iv) The name and address of the escrowholder for the transaction.

(v) A description of, and the estimated amount of, each cost payable by the seller in connection with the sale and a description of, and the estimated amount of, each cost payable by the purchasers in connection with the sale.

(B) In the case of the origination of a note:

(i) The name and address of the escrowholder for the transaction.

(ii) The anticipated closing date.

(iii) A description of, and the estimated amount of, each cost payable by the borrower in connection with the loan and a description of, and the estimated amount of, each cost payable by the lenders in connection with the loan.

(2) A copy of the written statement or information contained therein, as required by paragraph (2) of subdivision (h), shall be included in the disclosure form.

(3) Any interest of the broker or affiliate in the transaction, as described in subdivision (e), shall be included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material or essential to keep the information provided in the form from being misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(m) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(n) No agreement in connection with a transaction covered by this article shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(o) Each broker who conducts transactions under this article, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this article and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(p) Each broker conducting transactions pursuant to this article, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as

well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

10239. The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by this article. Nothing in this article shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this article shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

10239.1. Nothing in this article shall be construed to change the agency relationships between the parties where they exist or limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests in transactions subject to this article.

10239.2. For the purposes of this article, the following definitions shall apply:

(a) ''Broker'' means a person licensed as a broker under this part.

(b) ''Affiliate'' means a person controlled by, controlling, or under common control with, the broker.

(c) ''Servicing agent'' means the real estate broker or person exempted from the licensing requirements for real estate brokers under this chapter to act as agent for the purchasers or lenders to service the notes and deeds of trust, including the handling of the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default.

(d) Except as provided in paragraph (5) of subdivision (j) of Section 10238, the terms ''sale'' and ''offer to sell,'' shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction.

10239.3. (a) If any person other than a real estate broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this article, the provisions of this article and of any regulation or order issued under this article shall apply to the person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if the person were the broker.

(b) If any person other than an affiliate of a broker makes or keeps any of the books, accounts, or other records maintained in connection with a transaction described in this article, or in the case of an affiliate other than a parent or subsidiary of the broker, the provisions of this article and of any regulation or order issued under this article shall apply to the person with respect to those books, accounts, and other records to the same extent as if the person were the affiliate.

10239.4. This article applies only to the exemption from securities qualification claimed under Section 25102.5 of the Corporations Code. This article does not apply to any other exemption from securities qualification, including subdivision (e) of Section 25102 of the Corporations Code, which may be claimed without complying with this article, or to any permit to qualify the offer and sale of securities under the Corporate Securities Law of 1968. A real estate broker, when engaging in acts for which a license is required, who arranges a transaction pursuant to this article or pursuant to an offering subject to the Corporations Code, shall clearly indicate in the broker's transaction file the provision of the Corporate Securities Law of 1968 pertaining to qualification or exemption from qualification under which the transaction is being conducted, and shall retain this information for the period specified in subdivision (a) of Section 10148.

SEC. 5. Section 25102.5 of the Corporations Code is amended to read:

25102.5. There shall be exempted from Section 25110 a transaction that is the sale of a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, that complies with all of the provisions of Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code. For purposes of this section, a real estate broker licensed by the Real Estate Commissioner of this state who engages in the offer and sale of notes secured directly by real property of various makers, which are a series of notes or notes in which undivided interests are offered and sold, shall be deemed to be the issuer of these notes and undivided interests if the notes of the various makers are offered and sold pursuant to a plan or arrangement that is common to the various makers with respect to documentation and loan standards and that include provisions for servicing these notes on behalf of purchasers.

CHAPTER 903

An act to add Article 4.5 (commencing with Section 110423.100) to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Article 4.5 (commencing with Section 110423.100) is added to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4.5. Ephedrine Group Alkaloids

110423.100. Notwithstanding Article 4 (commencing with Section 110423), the sale or distribution of any dietary supplement products containing ephedrine group alkaloids is prohibited.

110423.101. This article shall not apply, but Article 4 (commencing with Section 110423) shall apply, to any of the following:

(a) A California licensed health care practitioner who is practicing within his or her scope of practice and who prescribes or dispenses, or both, dietary supplement products containing ephedrine group alkaloids in the course of the treatment of a patient under the direct care of that licensed health care practitioner, except that a licensed health care practitioner shall not prescribe or dispense dietary supplements containing ephedrine group alkaloids for purposes of weight loss, body building, or athletic performance enhancement.

(b) Dietary supplement products containing ephedrine group alkaloids that are sold or distributed directly to a licensed health care practitioner when the dietary supplement product containing ephedrine group alkaloids is used solely for the purpose of the treatment of patients under the direct care of the health care practitioner.

(c) Dietary supplement products containing ephedrine group alkaloids that are sold or distributed directly to a licensed pharmacist for resale to a patient for whom the products have been prescribed pursuant to subdivision (a).

(d) Dietary supplement products containing ephedrine group alkaloids that are not for resale in California and that are sold or distributed directly to businesses not located in California.

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

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CHAPTER 904

An act to amend Section 17071.46 of the Education Code, relating to public schools.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 17071.46 of the Education Code is amended to read:

17071.46. (a) If an applicant school district proposes to demolish a single-story building and replace it with a multistory building on the same site, the State Allocation Board shall provide a supplemental grant for 50 percent of the replacement cost of the single-story building to be demolished, if all of the following conditions are met:

(1) The cost of the demolition and construction of a new multistory building on the same site is less than the total cost of providing a new school facility, including land, on a new site for the additional number of pupils housed as a result of the multistory replacement building on the existing site, as determined by the State Allocation Board. For purposes of this subdivision, the method of estimating the site acquisition costs savings shall be based on previous actual site sizes and acquisition costs in the district for equivalent numbers of pupils, or as otherwise determined by the board if actual site acquisition comparisons are not available for the district.

(2) The school district will maximize the increase in pupil capacity on the site when it builds the multistory replacement building, subject to the limits imposed on it pursuant to paragraph (3).

(3) The State Department of Education has determined that the demolition of an existing single-story building and replacement with a multistory building at the site is the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site, as determined by the State Department of Education.

(b) The State Allocation Board shall establish additional requirements it deems necessary to ensure that the economic interests of the state and the educational interests of the children of the state are protected.

CHAPTER 905

An act to amend Section 1773.1 of the Labor Code, relating to public works.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1773.1 of the Labor Code is amended to read:

1773.1. (a) Per diem wages, when the term is used in this chapter or in any other statute applicable to public works, shall be deemed to include employer payments for the following:

(1) Health and welfare.

(2) Pension.

(3) Vacation.

(4) Travel.

(5) Subsistence.

(6) Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions.

(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be

granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

(d) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(e) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

CHAPTER 906

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

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

(a) Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices.

(b) Although innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code.

(c) Staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future.

(d) It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

SEC. 2. Part 13 (commencing with Section 2698) is added to Division 2 of the Labor Code, to read:

PART 13. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

(b) For purposes of this part, ''person'' has the same meaning as defined in Section 18.

(c) For purposes of this part, ''aggrieved employee'' means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions,

commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(e) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(f) An aggrieved employee may recover the civil penalty described in subdivision (e) in a civil action filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

(g) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(h) Except as provided in subdivision (i), civil penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities under this code, available for expenditure upon appropriation by the Legislature, and 25 percent to the aggrieved employees.

(i) Civil penalties recovered under paragraph (1) of subdivision (e) shall be distributed as follows: 50 percent to the General Fund and 50 percent to the Labor and Workforce Development Agency available for expenditure upon appropriation by the Legislature.

(j) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

CHAPTER 907

An act to amend Sections 1785.11.1, 1785.11.6, 1786.60, and 1798.85 of the Civil Code, relating to personal information.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 1785.11.1 of the Civil Code is amended to read:

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

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

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

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

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

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

(g) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, or with the purchase, lease, or rental of goods or non-credit-related services and who receives notification of a security alert pursuant to subdivision (a) may not lend money, extend credit, or complete the purchase, lease, or rental of goods or non-credit-related services without taking reasonable steps to verify the consumer's identity, in order to ensure that the application for an extension of credit or for the purchase, lease, or rental of goods or non-credit-related services is not the result of identity theft. If the consumer has placed a statement with the security alert in his or her file requesting that identity be verified by calling a specified telephone number, any person who receives that statement with the security alert in a consumer's file pursuant to subdivision (a) shall take reasonable steps to verify the identity of the consumer by contacting the consumer using the specified telephone number prior to lending money, extending credit, or completing the purchase, lease, or rental of goods or non-credit-related services. If a person uses a consumer credit report to facilitate the extension of credit or for another permissible purpose on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person may verify a consumer's identity under this section in lieu of the subsidiary, affiliate, agent, assignee, or prospective assignee.

(h) For purposes of this section, ''extension of credit'' does not include an increase in the dollar limit of an existing open-end credit plan, as defined in Regulation Z issued by the Board of Governors of the Federal Reserve System (12 C.F.R. 226.2), or any change to, or review of, an existing credit account.

(i) If reasonable steps are taken to verify the identity of the consumer pursuant to subdivision (b) of Section 1785.20.3, those steps constitute compliance with the requirements of this section, except that if a consumer has placed a statement including a telephone number with the security alert in his or her file, his or her identity shall be verified by contacting the consumer using that telephone number as specified pursuant to subdivision (g).

SEC. 1.5. Section 1785.11.1 of the Civil Code is amended to read:

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

(b) A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of

the existence of a security alert in the credit report of that consumer, regardless of whether a full credit report, credit score, or summary report is requested.

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

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

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

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

(g) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, or with the purchase, lease, or rental of goods or non-credit-related services and who receives notification of a security alert pursuant to subdivision (a) may not lend money, extend credit, or complete the purchase, lease, or rental of goods or non-credit-related services without taking reasonable steps to verify the consumer's identity, in order to ensure that the application for an extension of credit or for the purchase, lease, or rental of goods or non-credit-related services is not the result of identity theft. If the consumer has placed a statement with the security alert in his or her file requesting that identity be verified by calling a specified telephone number, any person who receives that statement with the security alert in a consumer's file pursuant to subdivision (a) shall take reasonable steps to verify the identity of the consumer by contacting the consumer using the specified telephone number prior to lending money, extending credit, or completing the purchase, lease, or rental of goods or non-credit-related services. If a person uses a consumer credit report to facilitate the extension of credit or for another permissible purpose on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person may verify a consumer's identity under this section in lieu of the subsidiary, affiliate, agent, assignee, or prospective assignee.

(h) For purposes of this section, ''extension of credit'' does not include an increase in the dollar limit of an existing open-end credit plan, as defined in Regulation Z issued by the Board of Governors of the Federal Reserve System (12 C.F.R. 226.2), or any change to, or review of, an existing credit account.

(i) If reasonable steps are taken to verify the identity of the consumer pursuant to subdivision (b) of Section 1785.20.3, those steps constitute

compliance with the requirements of this section, except that if a consumer has placed a statement including a telephone number with the security alert in his or her file, his or her identity shall be verified by contacting the consumer using that telephone number as specified pursuant to subdivision (g).

(j) A consumer credit reporting agency shall notify each consumer who has requested that a security alert be placed on his or her consumer credit report of the expiration date of the alert.

(k) Notwithstanding Section 1785.19, any consumer credit reporting agency that recklessly, willfully, or intentionally fails to place a security alert pursuant to this section shall be liable for a penalty in an amount of up to two thousand five hundred dollars ($2,500) and reasonable attorneys' fees.

SEC. 2. Section 1785.11.6 of the Civil Code is amended to read:

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

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

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

SEC. 3. Section 1785.15 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You have a right to place a ''security alert'' in your credit report, which will warn anyone who receives information in your credit report that your identity may have been used without your consent. Recipients of your credit report are required to take reasonable steps, including contacting you at the telephone number you may provide with your security alert, to verify your identity prior to lending money, extending credit, or completing the purchase, lease, or rental of goods or services. The security alert may prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that taking advantage of this right may delay or interfere with the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. If you place a security alert on your credit report, you have a right to obtain a free copy of your credit report at the time the 90-day security alert period expires. A security alert may be requested by calling the following toll-free telephone number: (Insert applicable toll-free telephone number).

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

you must contact the consumer credit reporting agency and provide all of the following:

(1) The personal identification number or password.

(2) Proper identification to verify your identity.

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

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

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

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

If you are a victim of identity theft and provide to a consumer credit reporting agency a copy of a valid police report or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status describing your circumstances, the following shall apply:

(1) You have a right to have any information you list on the report as allegedly fraudulent promptly blocked so that the information cannot be reported. The information will be unblocked only if (A) the information you provide is a material misrepresentation of the facts, (B) you agree that the information is blocked in error, or (C) you knowingly obtained possession of goods, services, or moneys as result of the blocked transactions. If blocked information is unblocked you will be promptly notified.

(2) Beginning July 1, 2003, you have a right to receive, free of charge and upon request, one copy of your credit report each month for up to 12 consecutive months.''

SEC. 4. Section 1786.60 of the Civil Code is amended to read:

1786.60. Notwithstanding subdivision (a) of Section 1798.85, prior to July 1, 2004, 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. 5. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) Except as provided in subdivisions (b), (h), and (i), a person or entity may not do any of the following:

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

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

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

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

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number.

(b) Except as provided in subdivision (e), a person or entity that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, and a state or local agency that has used, prior to January 1, 2004, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after January 1, 2004, if all of the following conditions are met:

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

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

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) is

implemented within 30 days of the receipt of the request. There may not be a fee or charge for implementing the request.

(4) The person or entity does not deny services to an individual because the individual makes a written request pursuant to this subdivision.

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

(d) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(e) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

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

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

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

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (e) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

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

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

(g) A person or entity may not encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number, as required by this section.

(h) This section shall become operative, with respect to the University of California, in the following manner:

(1) On or before January 1, 2004, the University of California shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the University of California shall comply with paragraphs (4) and (5) of subdivision (a).

(i) This section shall become operative with respect to the Franchise Tax Board on January 1, 2007.

(j) This section shall become operative with respect to the California community college districts on January 1, 2007.

(k) This section shall become operative with respect to the California State University system on July 1, 2005.

(*l*) This section shall become operative, with respect to the California Student Aid Commission and its auxiliary organization, in the following manner:

(1) On or before January 1, 2004, the commission and its auxiliary organization shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the commission and its auxiliary organization shall comply with paragraphs (4) and (5) of subdivision (a).

SEC. 5.5. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) Except as provided in subdivisions (b), (h), and (i), a person or entity may not do any of the following:

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

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

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

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

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number. A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(b) Except as provided in subdivision (e), a person or entity that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, and a state or local agency that has used, prior to January 1, 2004, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after January 1, 2004, if all of the following conditions are met:

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

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

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) is implemented within 30 days of the receipt of the request. There may not be a fee or charge for implementing the request.

(4) The person or entity does not deny services to an individual because the individual makes a written request pursuant to this subdivision.

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

(d) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(e) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

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

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

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (e)

shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (e) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

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

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

(g) A person or entity may not encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number, as required by this section.

(h) This section shall become operative, with respect to the University of California, in the following manner:

(1) On or before January 1, 2004, the University of California shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the University of California shall comply with paragraphs (4) and (5) of subdivision (a).

(i) This section shall become operative with respect to the Franchise Tax Board on January 1, 2007.

(j) This section shall become operative with respect to the California community college districts on January 1, 2007.

(k) This section shall become operative with respect to the California State University system on July 1, 2005.

(*l*) This section shall become operative, with respect to the California Student Aid Commission and its auxiliary organization, in the following manner:

(1) On or before January 1, 2004, the commission and its auxiliary organization shall comply with paragraphs (1), (2), and (3) of subdivision (a).

(2) On or before January 1, 2005, the commission and its auxiliary organization shall comply with paragraphs (4) and (5) of subdivision (a).

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 1785.11.1 of the Civil Code proposed by this bill and SB 602. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1785.11.1 of the Civil Code, and (3) this bill is enacted after SB 602, in which case Section 1785.11.1 of the Civil Code, as amended by SB 602, shall remain operative only until the operative date of this bill, at which time Section 1.5 set forth in Section 8 shall become operative, and Section 1 of this bill shall not become operative.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 1798.85 of the Civil Code proposed by both this bill and AB 763. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1798.85 of the Civil Code, and (3) this bill is enacted after AB 763, in which case Section 5 of this bill shall not become operative.

SEC. 8. Section 1 or 1.5 of this act shall become operative on July 1, 2004.

CHAPTER 908

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or

agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the

current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars ($250) per employee per violation for an initial violation and one thousand dollars ($1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase ''construction, farm labor, garment, janitorial, or security guard contractor'' includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, or security guard contractor.

(i) (1) The term ''knows'' includes the knowledge, arising from familiarity with the normal facts and circumstances of the business

activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase ''should know'' includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

CHAPTER 909

An act to add Section 35292.5 to the Education Code, relating to schools.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

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

SECTION 1. Section 35292.5 is added to the Education Code, to read:

35292.5. (a) Every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, shall comply with all of the following:

(1) Every restroom shall at all times be maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.

(2) The school shall keep all restrooms open during school hours when pupils are not in classes, and shall keep a sufficient number of restrooms open during school hours when pupils are in classes.

(b) Notwithstanding subdivision (a), a school may temporarily close any restroom as necessary for pupil safety or as necessary to repair the facility.

(c) Any school district that operates a public school that is in violation of this section as determined by the State Allocation Board, is ineligible for state deferred maintenance fund matching apportionments pursuant to Section 17584 if the school district has not corrected the violation within 30 days after receipt of a written notice of the violation from the board. Prior to determining that the school district is ineligible, the board shall provide the school district with a reasonable opportunity to cure the

violation. The board shall notify the Superintendent of Public Instruction regarding a school district found to be in violation of this section. The Superintendent of Public Instruction shall notify the Controller to withhold apportionments otherwise due the school district under Section 17584.

SEC. 2. It is the intent of the Legislature that a school employee who performs maintenance or repair functions related to restroom facilities that are subject to Section 35292.5 of the Education Code not be subject to discipline if the employee performs his or her responsibilities as required by his or her employer.

SEC. 3. The Legislature finds and declares that, as regards public schools, a principal purpose of this act is to clarify the preexisting requirements of Section 17576 of the Education Code by specifying the minimum requirements necessary to provide sufficient patent flush water closets for the use of pupils in a manner that is consistent with those requirements that apply to other public and private persons or agencies pursuant to Section 118505 of the Health and Safety Code. Because the local mandate established pursuant to Section 17576, which was enacted on January 1, 1948, was enacted prior to January 1, 1975, no reimbursement is required under this act pursuant to Section 6 of Article XIII B of the California Constitution.